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# SOME PRESENT-DAY CRITICS OF LIBERALISM

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## I. INTRODUCTION

"Liberalism" is a late modern word, appearing first (along with "conservatism," "socialism," and "communism") in the early nineteenth century. Its basic ideas are old. The particular freedoms called for have changed as the denials of freedom have changed. The demands have been for liberation from oppressive political rule or intolerant ecclesiastical authority; or from a status of slavery or serfdom; from restraints embodied in laws and customs that hamper the rise of new productive forces, or from limitations on equal opportunity resulting from narrow concentrations of private economic power; from limitations on voting rights and from interferences with freedom of religion, speech, and association. The constant concern has been with pleas for deliverance from restraints which, although perhaps widely regarded at a given time as a normal part of life, have come to be regarded, by some in the community, as unnatural and intolerable.

The founding of such pleas on ideas about man's natural traits also follows a long tradition. It is "the rational principle within us," said Aristotle, that distinguishes man from "the animals," who "do not apprehend reason, but simply obey their instincts." "Language," Aristotle continued, is the sign of this special human faculty; for the distinctive function of language is to express, not "feelings of pain and pleasure"—animals have that faculty—but "perceptions of good and evil, the just and the unjust, and other similar qualities." Again (according to Aristotle): although man is the least self-sufficient being—meant by his nature to live in close association with other men in an organized political community—he is, in the rightly organized community, subject only to the commands of persons who rule under "the laws," which are "sovereign over personal rule, whether it be exercised by a single person or a body of persons."[1] It is in this ancient Greek idea of "freedom under the law" that some historians of ideas have located the origin of "western liberalism," and it is chiefly in this sense that liberalism has been called "the tradition of the West."[2]

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[1] *Politics*, Ernest Barker trans. (Oxford, 1946), Bk. I, Chs. ii and v; Bk. III, Ch. xi; Bk. IV, Ch. iv.

Later examples of such ideas about freedom and reason are familiar, in both religious and secular literature: St. Paul exhorting his readers to heed "the inner law," in man's "mind," "written in the hearts of men"; early Christian jurists maintaining that it is man's nature to be free, so that restraints should be regarded as temporary expedients to correct deviations from normal human behavior; officials of a powerful medieval church intervening to protect citizens from arbitrary political rulers; various secular and ecclesiastical writers, from Cicero on, holding that rulers and people are equally bound by the dictates of right reason; writers of the Renaissance (a rebirth of early Christian as well as of ancient pagan ideas) and the Enlightenment, holding that men can achieve significant values on earth if they set their minds and hearts on releasing themselves from the handicaps of outmoded institutions and an adverse environment; and the later modern phrasing of these beliefs—holding that man, by virtue of his nature, has inalienable rights and that we can best discover truth about man and society through free inquiry and the dialectic of free discussion, or (more concretely) that the "civil liberties" (such as are set forth in modern "bills of rights") must be maintained as essential means for realizing man's highest intellectual, moral, and spiritual values and for reaching viable decisions in a democracy. Such ideas, it has been widely held, have provided approaches towards solving the never fully solvable problem considered in ancient, medieval, and modern political discussions: how to maintain a united community directed by strong and efficient government, without producing incompetent, incomplete citizens.

Such ideas do not, of course, make up the whole of the tradition of the West. There have always been advocates of the opposite, or complementary, values of order, stability, and consensus. These values also have been associated with ideas about the nature and destiny of man: with conceptions, that is, of man as a being who attains fulfillment of his nature chiefly by playing his assigned, directed, part in maintaining the existence and well-being of some group (e.g., a nation, class, or "community") in which alone he can find his own existence maintained and explained. Man's chief right or duty, in the extremer forms of such a doctrine, is to "conform," accepting as his own the common or general opinion or will of his group.

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[2] For general descriptions and appraisals of traditional liberal ideas, see Frederick Watkins, *The Political Tradition of the West* (Cambridge, Mass., 1948); Lionel Trilling, *The Liberal Imagination* (New York, 1950); Crane Brinton, *Ideas and Men: The Story of Western Thought* (New York, 1950), esp. pp. 373–550; John J. Saunders, *The Age of Revolution; the Rise and Decline of Liberalism in Europe since 1815* (New York, 1949); Eduard Heimann, *Freedom and Order* (New York, 1947), Chs. 1, 8, 10, 12; John H. Hallowell, *Main Currents in Modern Political Thought* (New York, 1950), pp. 84–367 and *passim.*

When the modern liberal has challenged the reasonableness or justice of particular orders made by official spokesmen for a ruling group, he has sometimes been rebuked as an advocate of disorder or disunity; or if he has appealed for the restoration of earlier freedoms, he has been rebuffed as one vainly trying to revive outmoded ideas. When, in a community with a democratic form of government, he challenges the justice or practicality of a particular decision of the official political majority, he is represented as rejecting the principle of majority rule; and when his reasoning in behalf of freedom runs counter to the reasoning of spokesmen for a particular religion, he is sometimes charged with exalting reason above faith.

The present-day criticisms of liberalism are varied (often mutually contradictory) and they issue from various sources. Some identical criticisms are made by groups that are frequently regarded as sharply opposed to one another in their ideas about man and society and the ways of governing a community. Thus fascists and communists are alike in describing liberals as deluded idealists or incompetent intellectuals. Spokesmen for these groups are emphatic and sweeping in their rejections. Both reject the idea that private citizens can have rights against political rulers. Both disparage free, "objective," inquiry as a means for discovering truth about either the physical world or about man and society; and both regard freedom of discussion as useless for arriving at any viable consensus in the political community. Said Oswald Spengler: the liberal's concern for individual or minority rights and freedoms leads only to "blindness," "cowardice," and "spiritual indiscipline;" he described the modern liberal as either "bourgeois" or "plebian" and said he meant both of those words to be understood as "terms of abuse." Lenin said that freedom of criticism usually amounts to "freedom from every thought-out theory," and he called the liberal an "arm-chair fool."[3]

There are a wide variety of criticisms offered by writers who are somewhat more moderate in their disparagement and who operate more clearly within the general limits of our western tradition. Some of these criticisms appear as items in general appraisals of the modern western mind; others appear in a systematic consideration of liberalism as the most characteristic feature of the modern mind. Some of these writers are friendly critics, offering warnings against what they regard as the liberal's exaggerated statement and application of his liberal negations and affirmations. Others regard the present-day political liberal as essentially wrong: wrong in advocating the wrong policies, because he concerns himself with matters that have no essential relation to the major problems of political life; or wrong in resting his policies on insecure moral and spiritual foundations, with wrong ideas about man's natural needs, motivations, and capacities, and about man's ultimate spiritual dimensions. In each of these groups, a wide variety of attitudes is displayed towards modern liberalism and the modern liberal, as indicated by the variety of descriptive terms they employ. Liberalism, they say, has become an essentially "negative," "neutral," "middle-of-the-road," "stereotyped," "mechanical," doctrine; or it is a "dogmatic," "pretentious," "aggressive," positively "dangerous," doctrine. The liberal, they say, is "a-moral," "secular," "religiously indifferent," "anti-religious;" or he is too much the "perfectionist,"—"self-righteous" and "priggish" in his appraisal of political policies. Thus also the liberal is variously identified by these critics as distinctively "sentimental," "idealistic," "romantic," "utopian," "intellectual," "academic," and "nineteenth-century." Some of the critics—conceding that there were once virtues in the characteristic liberal doctrines (suitable for the period in which they appeared), yet regarding those doctrines as no longer useful or safe—offer the consolation that liberalism, having done its essential negative, destructive work, is now destined to "disappear."

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[3] Oswald Spengler, *The Hour of Decision* (New York, 1934, translated from the German by Charles Francis Atkins), pp. 14, 109, 119; Nicolai Lenin, *What Is to Be Done* (London and New York, 1929), and *Proletarian Revolution and Kautsky the Renegade* (London, 1929).

This paper will deal with two groups of critics of liberalism, considered as a set of ideas about the rights of man in a political community.[4] The two groups have sharply opposed ideas as to just how the liberal is wrong in such matters, and also as to the intellectual and moral levels upon which a discussion of such matters can be profitably conducted. Professors Willmoore Kendall and J. Austin Ranney believe that the liberal wrongly interjects moral considerations into a political discussion; and that he is thereby specifically wrong in regarding individuals and minorities as having inviolable rights in a democracy. Reinhold Niebuhr, T. S. Eliot, and Professors John H. Hallowell and Sebastian

[4] On liberalism as a doctrine of human rights, see: Carl L. Becker, *Freedom and Responsibility in the American Way of Life* (New York, 1945); Robert M. MacIver, *The Ramparts We Guard* (New York, 1950); J. Roland Pennock, *Liberal Democracy: Its Merits and Prospects* (New York, 1950); Denis W. Brogan, *The Free State, Some Considerations on Its Practical Value* (New York, 1945); Bertrand Russell, *Authority and the Individual* (New York, 1949); UNESCO ed., *Human Rights: Comments and Interpretations: A Symposium* (London, 1949); David Fellman, "What is Liberalism?", *Prairie Schooner* (Fall, 1945), pp. 204–18. See also Harold D. Lasswell, *National Security and Individual Freedom* (New York, 1950), esp. Chs. 2 and 7.

De Grazia regard the liberal as wrong in leaving moral (and theological) considerations out of his political discussion; or that he is wrong specifically in trusting to an assumed natural reasonableness and ingenuity and spontaneous goodness in man as the adequate foundation upon which to construct a policy for making human rights secure in the political community.

## II. THE "MAJORITY-RULE DEMOCRATS"

Professor Kendall objects to the liberal's advocacy of "rights" in a political community—of freedoms, that is, which are natural to man, and which, accordingly, citizens ought to demand and rulers ought to acknowledge and protect.[5] Such a discussion, he contends, irrationally mixes moral with political ideas, violating "the frontier that divides political theory from ethics." Political theory, as Mr. Kendall defines it, is "value free." Advocating the values of free speech, religious freedom and fair law enforcement, belongs only to other disciplines, such as "ethics and theology." Political theory deals with the efficiency of means for the realization of political ends, not with the consistency of such ends or means with man's more basic values or preferences. It is concerned with "the method by which political decisions are to be made," not with the reasonableness, justice, or morality of the decisions.

Mr. Kendall objects particularly to the liberal's attempt to combine a discussion of the rights of individuals or minorities (other than the right to take part in making political decisions) with a discussion of democracy. "Democracy," properly understood, is the name for a form of government. It means government by "the people"; and this means, in practice, government by a "majority of the electorate," since unanimity among voters is never attainable. Thus, Mr. Kendall continues, a democrat may properly be called a "majoritarian." "The majoritarian is the man who finds the majority principle more congenial to his values than any other, but the finding on this is, or should be, value free." "The problem a democratic community faces is, as it seems to us, merely that of deciding in what persons amongst us our democratic values require us to lodge its power." Discussing "the merits of the majority's (i.e., the community's) setting aside the traditional civil liberties has no more place in a discussion of the majority principle than a thesis regarding the merits of an economy's producing dum-dum bullets would have in a discussion of the pricing system."

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[5] Willmoore Kendall, *John Locke and the Doctrine of Majority-Rule* (Urbana, 1940), and "Prolegomena to any Future Work on Majority Rule," *Journal of Politics*, Vol. 12, pp. 694–713 (Nov., 1950), written in reply to an article by Herbert McCloskey, "The Fallacy of Absolute Majority Rule" in the same journal, Vol. 11, pp. 637–54 (Nov., 1949) criticizing Kendall's views; J. Austin Ranney, "Toward a More Responsible Two-Party System: a Commentary," AMERICAN POLITICAL SCIENCE REVIEW, Vol. 45, pp. 488–99 (June, 1951); J. Austin Ranney and Willmoore Kendall, "Democracy: Confusion and Agreement," *Western Political Quarterly*, Vol. 4, pp. 430–39 (Sept., 1951). The quotations from Kendall alone are from the "Prolegomena" article, except where otherwise indicated.

Thus "democracy," in this majoritarian political theory, means "absolute," "unlimited," majority rule. If there are limits on a majority's rule, some other group, "outside" the majority, has to define the limits and the methods of applying them, and you then have rule by a minority. "In a democracy the last word must be with the majority." The American people, declares Professor Ranney, have in vain wanted both "majority rule and inviolable rights." We can't have both: we have to decide "whether democracy to us means majority rule *or* minority rights"; minority rights "means" minority rule. In a democracy, Professors Ranney and Kendall jointly declare, "no political decisions should be made by any body smaller than fifty per cent plus one of all its members." "The only restraint upon popular majorities consonant with democracy is such a sense of self-restraint as those majorities happen to possess."

To make the government of the United States the sort of democracy described by Professors Kendall and Ranney would require radical changes in our constitutional system. Professor Ranney lists the following necessary changes: abolishing staggered national elections, the equal representation of the states in the Senate, and Senate filibusters. Further changes would have to be made, it would seem, if the majority is never to be restrained by a minority. Thus to make Congress—and the presidency also, if we are to have more than one agency representing the majority—more nearly the representative of a bare majority, we would have to do away with all special majorities, change the present apportionment of the vote for President, and provide for a nationally defined suffrage and a national policing of the elections; and then, in order to give unlimited governing power to these bare-majority representatives, we would have to abolish, or let majorities in Congress or in popular referenda abolish or ignore, all the constitutional guarantees against governmental interferences with the traditional civil liberties.

This argument for unlimited majority rule is aimed particularly at the "judicial veto" as it operates in the enforcement of the constitutional guarantees. You don't have democracy, Kendall says, if you have a supreme court "armed with a bill of rights that forbids the majority to do certain things." "No form of government," Ranney and Kendall jointly declare, "in which the popular majority is checked by some other agency (such, for example, as a court exercising the power of judicial veto of legislative acts), external and not responsible to the majority, has any legitimate title whatever to the label of 'democratic'." Although in a given democratic community there may be certain traditional, commonly assumed and accepted, standards generally followed in appraisals of the rightness of majority decisions, it is still, in a genuine democracy, only a bare majority that decides what the standards mean, in their political applications, and when and how they are to be applied, or when and how they are to be changed or abandoned.[6]

The foregoing indicates the reasoning of the majoritarian in excluding from political theory all discussion of rights in a democratic community, except the right of "political" equality—i.e., the right of every voter to participate equally in the community's decision-making process. Yet Kendall admits into his theory most of the specific freedoms which the liberal treats as rights. He agrees that certain freedoms are necessary as means for obtaining majority decisions. A majority-rule system must have the proper "institutions" for forming majority decisions, with "guarantees" that use of the institutions will be available to all who are to be counted in the process of arriving at a majority decision. "Since the majority-rule democrats do not believe that the people can be counted upon to produce a majority will except where certain conditions are satisfied, they insist upon institutions calculated to facilitate the emergence of such a will (popular education, ventilation of public issues before the widest possible audience and with fullest guarantees that all points of view will find expression, such freedom of organization for political parties as will assure a maximum of competition between them for majority support, etc.").[7] A majority puts an end to majority rule if it prevents existing minorities from growing into new majorities.

Here the majority-rule democrat may appear to be adopting liberal political ideas. But this is only an appearance. Admitting the right or necessity, in a democracy, for a free exchange of views and for freedom of assembly and organization, is not injecting moral or liberal ideas or "values" into political theory. For such freedoms, in the majoritarian's theory, are only means, not ends; you can't have democracy without them, but they are not essential rights; and an existing majority can, through the proper democratic procedures, decide to destroy them, thus exercising its unlimited power by deciding to end majority rule; or it may unwittingly make decisions that bring about that result. Democracy, in Mr. Kendall's words, can "commit suicide." It is in this way that the majority-rule democrat keeps himself "intellectually" safe on the political side of the barrier he has erected between his politics and his ethics, holds on to his dogma that democracy means unlimited majority rule, and sticks to his judgment that liberals talk non-sense when they talk about inalienable rights of individuals or minorities under a democratic form of government.

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[6] For a discriminating criticism of our system of judicial review as it operates in the protection of civil liberties, see: Henry Steele Commager, *Majority Rule and Minority Rights* (New York, 1943); Fred V. Cahill, *Judicial Legislation* (New York, 1952); Earl Latham, "Theory of the Judicial Concept of Freedom of Speech," *Journal of Politics,* Vol. 12, pp. 637–51 (Nov., 1950).

[7] *John Locke and the Doctrine of Majority Rule,* p. 129.

*Comment on the majoritarians.* It seems proper to insist that in a political discussion the word "democracy" should be used to identify a form of government—a location of "highest" decision-making authority—and not as the name for some humane governmental policy. The former has been the prevailing meaning of the word since the Greeks started, in the fifth century, B.C., talking about the desirable results that might be achieved by placing political decisions in the hands of "the people." A government in which a few rule in the interest of the many may be called a good government, but not, in a proper political vocabulary, a democracy. It also seems proper to say that democracy means "majority rule" since that is as near as we ever get to rule by all the people. It may be agreed also that democracy means "unlimited" majority rule, in one sense of the word "unlimited" as it is used in political discussions. The most ardent advocate of "inviolable" and "inalienable" rights of individuals and minorities understands that a ruling group can violate these rights; and he knows that in any government there is some formally designated person or group of persons possessing an authoritative "last word." Even in states in which the ordinary governing bodies rule legally only within limits set forth in a written constitution, there are other constitutionally designated bodies that can legally abolish those limits. In this familiar meaning of unlimited ruling power Professor Ranney is correct in saying that if the American people want democracy they can not have inviolable rights—i.e., rights that the finally deciding "majority" may not legally violate. That majority can legally deprive any individual or group of life, liberty, and property by any means it chooses, and make the deprivations effective to the full extent of whatever coercive or persuasive powers it possesses.

It may be agreed, finally, that political theory is not altogether theory about "values." As a special technical discipline, political theory can be said to consist of objective, "value-free," descriptions and explanations of observed regularities in the relations among political events; or of deductions from postulated premises about political behavior, or of generalizations based on a rational weighing of the best available evidences in this field. That sort of political theory (or political science) can be useful in appraising governmental forms and activities in terms of their efficiency in realizing stated preferences concerning the location and scope of governmental power. These preferences may be derived from various sorts of basic values and modified by various experiences in the pursuit of the values. A political theorist of this sort is not obligated to look into the meaning of the values. If he offers only to give advice to a community whose values (whatever they may be) lead it to want a government organized and operated in conformity with the wishes (whatever they may be) of a relatively large number of the members of the community, he may properly confine his efforts to pointing out the ways whereby such a people—given their particular capacities and habits and the limitations of their particular environment—are most likely to get that sort of government. It thus seems proper to say that political theory of this sort or to this extent is (or ought to be) "value-free."

To agree to the foregoing definitions—of democracy as "majority rule," of a majority's "power" as, in an important aspect, "absolute," and of political theory as, in some aspects, "value-free,"—is not, however, to agree that this excludes from a rational political discussion all consideration of the values that appear to determine a preference for a democratic form of government, or all consideration of the desirability of establishing judicially applicable limitations upon the powers of the ordinary policy-declaring bodies in a democracy. The meaning of a preference for a democratic form of government is rarely fully indicated by a specification of the number or qualifications of the people who are to take part in making the final decisions. There are different kinds of majority rule, and a desire for one kind does not commit anybody to a desire for another kind. Plato and Aristotle (discussing democracy as a form of government) set forth what they regarded as the essential differences between a "pure" democracy, in which the majority rules in the interest of all the people and in accord with traditional customs or unwritten laws of the community, and a "corrupt" democracy, in which the majority rules in its own interest and without regard for those higher obligations.[8] Similar evaluations appear in many of the later classical statements of political theory. Thus ideas on majority rule are combined with ideas on inalienable rights in the theoretical systems of both Locke and Jefferson.[9]

James Bryce and Ernest Barker also (both cited by Ranney and Kendall as writers who properly treat democracy as a form of government) have these "mixed" ideas about democracy. Each specifies the ends that majority rule must serve if it is to fit his conception of a rational preference for a democratic form of government. Bryce explained that by "democracy" he meant rule by a majority that safeguards "independence of thought," and a "free play of the intellect," permits the expression of "unpopular opinions," and bears with opposition "because it has faith in the victory of truth." "Not less than any other form of government," said Bryce, "does democracy need to cherish Individual Liberty."[10] Said Barker: A democracy that "rests merely on the will of numbers rests merely on force. If we keep the name and the idea of democracy, we must find some other basis. . . . It is not the majority, as a majority, that matters. It is each human being, as such." The "essence" of democracy, Barker continued, "what matters," is a majority that seeks "full development of personality and individuality," tolerates "differences in doctrine," encourages "discussion of competing ideas," and intervenes in the life of the individual "with a restrained and cautious hand."[11]

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[8] Aristotle, *Politics*, Bk. III, Chs. iv, vi, xi; Bk. IV, Chs. i, iv, xi, xiv; Bk. V, Ch. ix. Plato, *The Laws*, IV, 715.

[9] For Locke, see the *Second Treatise of Government*, secs. 16, 22, 49, 87, 88, 95–99, 116, 131, 134–42, 222. For Jefferson, see the Declaration of Independence, his *Notes on the State of Virginia* (1789), and his first *Inaugural Address* (1801).

Most systematic discussions of democracy (as a form of government) consider the desirable limitations on majority rule. Most of the present-day democracies have written constitutions containing provisions designed to restrain the powers of bare, temporary, majorities: orders and prohibitions intended (in Bryce's words) to operate as "mitigations of the faults to which democracy is liable." "The annals of democratic governments consist largely of an account of the various expedients resorted to for this purpose," said Bryce. He discussed, in this connection, the familiar expedients of indirect election, upper legislative chambers, over-lapping terms, and "checks and balances" (including judicial review) in the distribution of governing powers.[12]

Why should a community, having a general preference for majority rule, be debarred from choosing the means it considers most useful in making majority decisions more generally acceptable and effective? The American Congress seems traditionally committed to the belief that a "judicial veto" is a useful means to this end. At various times, Congress has been urged to enact or initiate measures designed to destroy or limit the judicial veto. In rejecting or ignoring such proposals, Congress may be reflecting some sort of a persistent popular opinion that legislative decisions will be more willingly and intelligently observed if we retain this safeguard; a belief that with the veto—as it operates in retarding, warning, yet not finally frustrating, a popular will—we are more likely to have the sort of community best fitted for long-run majority rule.

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[10] *Modern Democracies* (New York, 1921), Vol. 1, p. 59; Vol. 2, pp. 121, 521.

[11] *Reflections on Government* (Oxford University Press, 1942), pp. 26, 175, 196.

[12] *Modern Democracies*, Vol. 2, Ch. 64 and pp. 393–95.

Bryce (describing our judiciary as "in fact and in name an independent branch of the government side by side with the Executive and the Legislature") said that he regarded our use of judicial review, in placing certain matters "out of reach of legislative or executive action," as one of our most significant contributions to the "practical art" of democratic government. The American people, he said, had "resolved to put certain rules out of the reach of temporary impulses springing from passion or caprice, and to make these rules the permanent expression of their calm thought and deliberate purpose. It is a recognition of the truth that majorities are not always right, and need to be protected against themselves by being obliged to recur, at moments of haste or excitement, to maxims they had adopted at times of cool reflection."[13] Other commentators, here and abroad, have described this feature of our system as a successful experiment in the limitation of governmental power in a democracy.

In insisting on rights the liberal does not mean that rulers cannot violate rights; he means, frankly, that rulers ought not to violate rights. The liberal recognizes the necessity of having somewhere in the governmental structure a "last-saying" authority. As a democrat he recognizes the necessity of placing that authority in the hands of a relatively large number of the sane adult citizens. He acknowledges the citizen's moral and rational obligation to obey governmental commands which his conscience and reason may condemn as violations of rights. The liberal is not a philosophical anarchist; he does not advocate either active or passive resistance to law enforcement. He understands that majorities as well as minorities have rights. None of this, however, commits him to the conclusion that if you want majority rule you can reasonably attach importance to the protection of rights only insofar as the exercise of such rights operates as a means for the formation of majority decisions. And none of this commits the liberal democrat to Professor Kendall's apparent belief that if you criticize any political opinion held by the majority you are presuming to substitute your own "values and lights for those of the people" (or "the majority of the people"), and thereby renouncing any consistent belief in democracy as a form of government.

Discussion of the proper scope of governmental action—of matters to be controlled and matters to be left free from control—has usually been regarded as a proper part of political theory, no less important than the question as to who should rule. Ideas about powers to be exercised and freedoms to be respected by a ruling majority have rarely been sharply separated from ideas about the ethical status of majority rule. Ancient, medieval, and modern political theorists have attempted to explain the values implicit in the political preferences of a people and to show how far and in what ways they can be reconciled with one another. Values may lead to a desire for both majority rule and inviolable rights, with guarantees that majority rule will not be used to destroy other freedoms we value. We give up the full achievement of some preferences, in part, in order not to thwart the achievement of other preferences. Thus a "value-free" political theory is likely to be of limited utility for a people strongly influenced by values. Rule by a majority that undertakes to rule without understanding the values that influence the attitudes of substantial minorities is likely to become impotent majority rule. Minorities as well as majorities exercise power in a democracy. Thus, said Bryce (still discussing democracy as a form of government): "Every people that has tried to govern itself has recognized the necessity for precautions against the errors it may commit, be they injurious to the interests of the State as a whole or in the disregard of those natural or primordial rights which belong to individual citizens."[14]

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[13] *Modern Democracies,* Vol. 2, pp. 11, 27, 84; and see Cyril John Radcliffe, *The Problem of Power* (London, 1952), pp. 61–64, 85–87.

The liberal insists that these rights should not be disregarded. He believes that rights to religious freedom, freedom of speech, and fair trials should be acknowledged and protected by his government, even at the cost of accepting what the Greeks called "counter-devices" in a governmental system. It seems to him strange to say that people who want majority rule cannot regard as inviolable the freedoms that make majority rule possible and durable; and strange to say that people cannot reasonably desire both democracy and the conditions that make democracy desirable.

## III. THE RELIGIOUS CRITICS

With the critics now to be considered, disparagement of liberalism forms part of a general lamentation over the moral and spiritual degeneration of modern society. In their specific criticisms, some of these critics approve main items in the liberal program for political action, while rejecting liberalism as a political philosophy; others reject both the philosophy and the program. The common idea in these criticisms is that liberals are wrong or ineffective in their political policy because they have not understood the nature of the evils with which political action deals. Conceiving man as by nature reasonable, magnanimous, and cooperative, the liberals have believed that existing injustices, discomforts, and insecurities in the political community can be corrected by benevolently motivated, rationally devised, institutional reforms.

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[14] *Modern Democracies*, Vol. 2, pp. 390–91.

They fail to realize that our misdeeds and mistakes, in public as in private life, are natural and persistent manifestations of man's innate sinfulness and irrationality.

Perhaps the lengthiest and most emphatic criticism of liberalism, on religious grounds, is to be found in the works of a theologian most sympathetic with liberal aims. Reinhold Niebuhr—a progressive, humanitarian, internationally-minded theologian—has set forth, in several books, his ideas as to why the liberal's schemes for bringing freedom, justice, comfort and peace into the world, have achieved so little. Organize and plan, the liberal says, in his pleas to good and reasonable men: redistribute wealth; educate the masses; use our vast material resources and technical knowledge in eliminating disease and raising the standard of living for everyone; abolish tyrannies and set up democratic governments everywhere; reduce armaments and establish world tribunals for the peaceful and impartial settlement of international disputes. Such hopes, Niebuhr says, are vain. Good plans are futile unless they are undertaken by men wise enough to understand the depth of man's unwisdom and with a moral enlightenment that enables them to realize the strength and pervasiveness of human sinfulness. These views are best summarized in the following quotations from two of Niebuhr's books:

> The utopian illusions and sentimental aberrations of modern liberal culture are really all derived from the basic error of negating the fact of original sin. This error . . . continually betrays modern man to equate the goodness of men with the virtue of their various schemes for social justice and international peace. . . . Obviously there are varying degrees of sin and guilt and some men and nations are more guilty than others of disobedience to the heavenly vision. Also there are specific evils in history, arising from the specific maladjustments in social and political organization. But these evils can be dealt with most adequately if men do not give themselves to the illusion that some particular organization of society might be found in which men would no longer stand in contradiction to the law of their being.[15]

> The assumption of rationalists in the past centuries has been that either education or the equalization of economic interests would finally fashion the mind into a perfect instrument of universal and absolute knowledge, and would ultimately destroy social friction by eliminating the partial perspectives which prompt men to assess social issues in conflicting terms. But this assumption fails to recognize that the most intelligent and disinterested person can never escape his fate as a child of nature and finitude. . . . Thus even the most refined spiritual achievements of humans can never result in an unqualified synthesis of human hopes and aspirations. At some point they will always accentuate social conflict by making men more stubborn in the defense of their interests, under the illusion that their interests represent universal values.[16]

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[15] *The Nature and Destiny of Man,* 2 vols. (New York, 1941–43), Vol. 1, p. 273. See also *Reflections on the End of an Era* (New York, 1934); *An Interpretation of Christian Ethics* (New York, 1935), pp. 140–50, 171–79; *Children of Light and Children of Darkness* (New York, 1944).

[16] *Christianity and Power Politics* (New York, 1940), p. 156.

Niebuhr has recently illustrated these views, about man and his history, in a special study of the ironies of our American experience. We have demonstrated in a special way, he believes, an irrational faith in reason and a moral blindness to man's inherent immorality. The Puritan and Calvinist settlers believed they were creating "a new heaven and a new earth." The Constitutional Fathers, and we, their heirs, have continued to trust in our superior virtues and talents in making new beginnings in a corrupt world. Here then are some of the ironies in our actual achievement: a nation of greatest productive efficiency, we are involved in a global controversy threatening wholesale destruction; disparaging materialism, we have been its most expert practitioners; having achieved a high state of economic security at home, we are involved in unprecedented global insecurity; having made ourselves the world's most powerful nation, we are yet forced to accommodate our most fateful decisions to the demands or needs of other nations. "A nation with an inordinate degree of political power is doubly tempted to exceed the bounds of historical possibilities, if it is informed by an idealism which does not understand the limits of man's wisdom and volition in history."[17]

Niebuhr repeats these views in several of his books. Man, he says, "cannot rise to a simple triumph over historical fate." Our natural will to survive becomes a constant search for security, which in turn is transmuted into a competition for power and superiority. Sin, ignominy, and misery are our lot on earth. Yet this fervent pessimism by no means leads Niebuhr into any advocacy of negativism or passivism in his attitudes towards political action. For man, Niebuhr explains, is a complex being: a part of "nature" and involved in its limitations, yet also outside nature, and able to understand and appraise and in some measure transcend those limitations. Goodness and dignity are, in some measure, our lot. Sinful in his "original" nature, man can yet seek to become righteous; he faces the never realizable yet never escapable command to "be perfect." To qualify himself for making a better among the imperfect choices, he must first put himself in the proper moral and spiritual state. He must recover the traditional Christian virtues of acknowledging and repenting of one's sins. And he must try to understand the complexities of human history—"the limits of all human striving, the fragmentariness of all human wisdom, the precariousness of all historical configurations of power, and the mixture of good and evil in all virtue."

Thus repentance, rebirth, and a search for understanding are key words in Niebuhr's moral commandments. But so also is realism. The

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[17] *The Irony of American History* (New York, 1952), p. 143.

Christian must be practical; ready to choose the less over the more imperfect choices available to him at any given time. Indeed Niebuhr's criticisms do not actually separate him from liberals in the efforts to achieve justice and peace and make human rights secure. He agrees that citizens have fateful decisions to make; political reforms to be striven for actively and courageously. Thus the fault of liberals appears to be (in Niebuhr's diagnosis), not that they have rejected moral criteria, but that they have failed to qualify themselves, spiritually and intellectually, for a genuine application of moral criteria. The liberal's illusions about the possible scope of moral achievement at any given time often result in net losses for morality.

T. S. Eliot's criticisms of liberalism appear in several of his essays and short books. Like Niebuhr he believes that the typical defects of modern society are to be found in an exaggerated faith in human "reason" and "perfectibility" and in the lack of a religion or of any other sort of basic belief.[18] Our ordinary political distinctions today, between the democratic and the totalitarian countries, rest, Eliot believes, on nothing very significant. Indeed the totalitarian countries might be said to be more democratic than the democracies, since their policies may reflect a clearer popular will. The democracies and the dictatorships are alike, however, in their essential secularism. In a few of the western countries (Spain, Portugal, and Ireland) religion retains a slight hold. For the rest, the real division is between the pagan countries (communist and fascist) and the neutral countries (e.g., the United States, France, the British dominions, and possibly England). The pagan peoples have at least the virtues of not pretending to be religious and yet of having some sort of positive beliefs, however shallow and inconsistent. The neutral countries have no philosophy of any sort; to call them "Christian" is "an abuse of terms"; for they are Christian only in the sense that "no one is penalized for the formal profession of Christianity."

Both democracy and liberalism are, Eliot believes, typical manifestations of the degeneration of the modern West. He has little that is specific to say about democracy, and regards the word as now devoid of concrete definition; it means too many things to mean anything. "If anybody ever attacked democracy, I might discover what the word meant." Liberalism, Eliot agrees, once meant something concrete and valuable. In early modern times the beliefs we associate with that term supplied a useful negative element in the prevailing ideology and policy, counteracting old abuses by actively opposing an active, coercive intolerance at a time when the disputants were in essential agreement in their general religious and moral ideals. Present-day liberalism, Eliot believes, serves no present-day needs. It has, like democracy, become a spineless creed, lacking any beliefs strong enough to stand up against the diabolic faiths of racism, class war, and the selfish imperialisms of capitalism and revolutionary socialism. Or if either democracy or liberalism can be said to have a religion, it is the religion of materialism, "the worship of profit." "Democratic liberal society, assembled around nothing more permanent than a congeries of banks, insurance companies, and industries," has no belief in anything more essential than "compound interest and the maintenance of dividends." The cure for this modern disease of the West cannot be found in good intentions and secular institutional changes. There must be a change in beliefs, or a change from non-belief to belief. "If you will not have God you should pay your respects to Hitler or Stalin."

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[18] T. S. Eliot, "Religion and Literature" and "Catholicism and International Order," in his *Essays, Ancient and Modern* (New York, 1936). The following account of Eliot's specific criticisms is based chiefly on *The Idea of a Christian Society* (New York, 1940), Ch. 1.

The western world, then, Eliot believes, can be saved only by religion; and only by the right religion, which is (for the West) Christianity.[19] And, like any other religion, Christianity must be authoritatively set forth and actively propagated, under political auspices. The liberal idea that religion is "a matter of mere private belief and that Christians should be able to accommodate themselves to any world that treats them good-naturedly, is becoming less and less tenable": the Christian God is "a jealous God." The restoration of Christianity requires the restoration of Christian institutions. A Christian society must be founded on a Christian political philosophy; and it must be organized in such a way as to promote a wide understanding and acceptance of the Christian hierarchy of values. This does not require the adoption of any one of the traditional "forms of government." The form of the government of a Christian society may be a monarchy, aristocracy, or democracy; or a "corporative state" of the sort described in encyclicals of Pope Pius XI. "To identify any particular form of government with Christianity" is to confound "the permanent with the transitory, the absolute with the contingent."

Eliot's scheme for a Christian organization of society consists of "The Christian State," "The Community of Christians," and "The Christian Community," and an established Christian Church. By a "Christian

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[19] The following summary of Eliot's ideas on the structure and functions of a Christian society is based chiefly on *The Idea of a Christian Society,* pp. 23 ff. See also his *Notes Towards the Definition of Culture* (London, 1948), pp. 13–20, 28–34, Chs. 4–5, and pp. 122–24; *For Lancelot Andrewes: Essays on Style and Order* (London, 1928), Ch. 8.

State," Eliot means "the government" (in the ordinary sense of the word): the "rulers" (directors of policy) and the whole personnel engaged in the work of legislation, administration, and law enforcement. The rulers do not have to be believing Christians: they may be infidels in their private beliefs, but they must govern as Christians, conforming to "the temper and traditions" of a Christian people; they may "frequently perform un-Christian acts," but must "never attempt to defend their actions on Christian principles." By a "Community of Christians" Eliot means an elite gathered from among clerics, teachers, and intellectually and morally superior laymen; the function of this group will be to help bring Christian principles into education, public policy, and the private economy. The "Christian Community" is the general body of citizens in whom the Christian faith has been ingrained; for this group—"the masses"—Christianity will be essentially a matter of unconscious habit, with ordinary people conforming as a matter of course to established religious observances and traditional patterns of Christian behavior. The form of an established Christian Church, and its relation to the state, might vary in different Christian countries; but everywhere its function would be to speak with "final authority" in the interpreting matters of faith and morals.

Eliot recognizes the difficulties in the way of establishing his Christian society anywhere. Actual tendencies in social behavior—exaggeration of the profit motive, exploitation of labor, and an unfair distribution of wealth—are, he believes, carrying society in the opposite direction. Few will dispute that "a great deal of the machinery of modern life is merely a sanction for un-Christian aims." Although Eliot in such passages indicates a humane interpretation of Christian economic principles, he by no means identifies this with any vision of a social democracy. There is a frequently recurring idea, in his various works, that an efficient, responsible Christian society must be made up of "classes"—each with its special traditions and culture and its special contributions to make to the total culture of that society; and each, accordingly, with class and local as well as general, national, loyalties—all subordinate to the stabilizing force of Christian traditions of belief and behavior.

By the "idea" of a Christian society, Eliot has no notion of a society that ever was or ever would be; he was, he explained, using the word "idea" in its classical sense of "the conception of a thing which is given by the knowledge of its ultimate aim." The Christian social goal may, he feared, seem undesirable to most of the present-day intelligentsia, perhaps "intolerable" to "the liberal mind." Neutral societies may persist indefinitely. But, he believes, "if the present-day peoples are to develop any positive culture of their own"—in other words, if they are to have any culture at all—they "must proceed in the direction of a pagan or of a Christian society." In either event, he believes, liberalism has spent its force, played out its historic role. Its distinctive attitudes and beliefs "belong to an age of free exploitation which has disappeared; and our danger now is that the term may come to signify for us only the disorder the fruits of which we inherit, and not the permanent value of the negative element." Whether religion or paganism prevails, liberalism, Eliot believes, is "destined to disappear."

Professor Hallowell finds confirmation for his own views on the futility, or the positive evils, inherent in modern liberalism, in the writings of various representatives of "Protestant Neo-Orthodoxy," chiefly Niebuhr. He restates, with emphasis, the view that liberalism's basic defect is its ignorance or repudiation of the essential Christian doctrine of original sin.[20] He attributes to traditional liberalism the extreme view that, since man has natural inclinations to deal reasonably and amicably with his fellows, progress is "automatic," "inevitable," and "irreversible." And then, through a special application of the familiar argument that extreme affirmations lead to extreme contradictions, he assigns to present-day liberals a large share of responsibility for the irrationality and violence of the mid-twentieth-century totalitarian regimes. Overconfidence in man's reasonableness and goodness becomes an exaltation of will over reason, which leads to the triumph of evil over good; trust in the strength of the normal man's natural desire for freedom ensures the victory of the abnormal, power-seeking man.

Professor Hallowell cites two sorts of examples of this fateful transition from liberalism to totalitarianism: the legal theory of some German jurists, setting forth their explanations of "positive" law (as distinguished from natural law and moral law); and some public statements by prominent men who, in the mid-nineteen-thirties, spoke in praise, defense, or extenuation of Hitler's acts.

The legal positivist defines "law" (the law of a state, that is, which is what the jurists are talking about) as consisting of commands issuing, directly or indirectly, from the "sovereign" in a state—that is, from the person or body or bodies of persons formally designated as having final authority to make the laws to be enforced by the government of that state. The dangerous fallacy in this legal doctrine, Hallowell says, is that it treats as law every formally proper command issuing from such a source, however unreasonable or unjust the command may be. Thus the legal positivist, typical representative or product of the modern liberal mind, ignores, or leads others to ignore, all distinctions between good and evil, reason and unreason. The legal positivists thereby, Hallowell declares, "teach that might makes right."[21]

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[20] Professor Hallowell's views on the moral and practical defects of modern liberalism and his proposed reforms are set forth in his *Main Currents in Modern Political Thought* (New York, 1950); see especially pp. 558–70, 612–24, 662–73.

The defenders of "Hitler's terror," cited by Hallowell as examples of liberalism's baneful influence, are James W. Gerard, Hans Rothfels, and Winston Churchill. Gerard said that Hitler unified the German people, improved the education of German youth, rid the country of communism, curbed parliamentary government (a form of government not suitable for Germans) and created a "Spartan state"; Gerard described these achievements as "all good." The burden of Rothfels' defense or apology was that anyone was "pharisaic" and "self-righteous" in passing judgment on Germany's "mistakes" without having experienced the hardships the Germans had suffered. Churchill, praising Hitler's "courage" and "perseverance," said he had always hoped that if England were ever defeated in a war, the English people would "find a Hitler to lead us back to our rightful position among the nations."[22]

Professor Hallowell believes that our political ideas should be founded in the spiritual and moral principles revealed generally in the Greek-Hebraic-Christian tradition. He finds those principles set forth best by St. Thomas Aquinas and St. Augustine, and he follows Niebuhr in urging liberals to acknowledge their sins and proclaim their repentance. He summarizes his own version of essential Christian principles, upon which our political beliefs and policies should be based, as follows, in the last sentence of his book:

> Only if we are concerned about the salvation of our souls shall we be of much use in saving the world, only if our eyes are focussed on the Kingdom of God shall we see with clearer vision what needs to be done here and now, only if we surrender our wills, as completely as men can to the will of God, will we be enabled by the power of God to make the self-sacrifice which the salvation of the world demands—in short, only by aiming above the world shall we succeed in mastering the world.

Hallowell had explained that he did not mean to exclude consideration of necessary reforms in the structure of our economic and political life. He means rather that no institutional reforms are likely to achieve anything of essential value unless they are undertaken with the perspective and principles provided by Christianity. We cannot obtain peace, security and happiness in this world unless we seek "first the Kingdom of God and his righteousness."

Professor Hallowell's somewhat more specific statement of the proper principles upon which to found a Christian social order consists chiefly of quotations from the late William Temple, Archbishop of Canterbury. Temple summarized his basic principles as follows: Man is not "wholly" ruled by reason, and we cannot remove social injustices merely by reforming our social institutions; yet "civic action" is necessary in the social application of moral principles; recognition of the need for "social fellowship" must be reconciled with a respect for the worth of every person, "absolutely independent of all usefulness to society"; and society must be organized in such a way as to give to every individual "the widest extension of personal responsibility."[23] These views, approved by Hallowell, do not seem essentially different from the views of the liberals criticized by Hallowell.

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[21] *Ibid.*, p. 613.

[22] *Ibid.*, pp. 614–15.

Professor De Grazia regards "toleration" and "the absence of community" as the characteristic maladies of modern civilization. Under the final triumph of the "notion of the Individual," which "has agitated the Western world since the deaths of Alexander and Aristotle," we have lost all sense of the need for "common belief systems" and the "religious and political bonds" that create a community and hold it together.[24] We have now sunk to that condition in which people feel united with their fellows only in "war and crisis"; for only in such tragic situations do most of the people gain a "feeling of community." To make this feeling a normal part of life we must restore the political community to its rightful place and function. We must shift the center of our political interests from "individuals and classes and their mutual antagonisms" to the people united in "the Great Community"—"the state," which "embraces all other communities." This community must be sustained by a body of common values, with "moral authority," and by a recognition of "the close psychological connection and mutual support of religious and political ideologies." The state is "the highest secular association because like its counterpart, the religious community, it exists to protect man from his greatest fear—isolation."

De Grazia assails modern liberalism for its advocacy of toleration, which he describes as the enemy of morality as well as of community.[25] He lists, as representatives of this immoral doctrine of tolerance, outstanding names in the Anglo-American liberal tradition—from Milton,

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[23] *Ibid.*, pp. 689–91, quoting from William Temple, *Christianity and the Social Order* (London, 1942).

[24] Professor De Grazia's eloquent pleas for the restoration of the idea of community are set forth at length in his *The Political Community: A Study of Anomie* (Chicago, 1948). See especially his preface and pp. 176–90.

[25] De Grazia's ideas on the evils of toleration and his proposed cure are emphatically set forth in an address on "Toleration and Forgiveness: the Ability to Judge Good from Evil," in *Vital Speeches*, Vol. 16, pp. 149–53 (Dec. 15, 1949).

Roger Williams, and Locke to J. S. Mill. He regards Mill as the worst of the lot, since Mill (De Grazia says) advocated complete tolerance of every kind of thought and pursuit. De Grazia calls tolerance a "radical immoral force" and (borrowing a name from Martin Luther) "a sly whore." Tolerance, he continues, "working silently," has "turned the tolerator into a twilight man and the tolerated into a pale disbeliever," reducing "communal moral standards to a burnt-out hulk." He believes that Mill's ideas foster a "forced variety"; and he states his own belief that "it is always better to be right than to be different."

De Grazia's alternative to tolerance is not intolerance (which he regards as, like tolerance, a "counterfeit"), but "forgiveness," which he defines as "the promise and act of receiving the errant person back into the community." The "right to forgive" must be the special prerogative of "those who have the authority to lead, to guide, to watch over the community." The rest of the community should demonstrate their disapproval of bad ideas and pursuits by communicating their "moral disfavor" through "ridicule, rebuff, irony, contempt, avoidance, cold silence," and other "bloodless forms of moral expression."

*Comment on the religious critics.* Mill did not (the present writer believes) belittle the value of consensus. He said: "As mankind improve, the number of doctrines which are no longer disputed or doubted will be constantly on the increase; and the well-being of mankind may almost be measured by the number and gravity of the truths which have reached the point of being uncontested." He did warn against an overemphasis on consensus and against the dangers in governmental coercion as a means of securing agreement. And he did put a high value on individuality and originality. There will always, he said, be the need for persons who can "discover new truths . . . and set the example of more enlightened conduct and better taste and sense in human life. This cannot well be gainsaid by anybody who does not believe that the world has already attained perfection in all its ways and practices." And Mill did not advocate toleration of every sort of speech or action. Like De Grazia, he preferred bloodless forms of opposing the speech and action he considered immoral or unreasonable. For "moral vices" and "irrational behavior," he advocated such methods as "remonstrating," "reasoning," "persuading," "entreaty," and (in words strikingly similar to De Grazia's) such forms of "moral retribution" as "reprobation," "expression of distaste," "avoidance," "contempt," and (in extreme cases) "abhorrence."[26] Since Mill advocated free discussion as an essential means of discovering truth and securing clear agreement and strong convictions about what is true and right, he would (it would seem) readily accept De Grazia's aphorism that it is better to be right than to be different; as De Grazia would probably agree that it is better to be right than to be alike, and better to be different than to be wrong.

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[26] John Stuart Mill, *On Liberty* (Modern Library ed.), pp. 47, 83, 91, 102.

It is difficult to see why either the theorizing of the legal positivists or the praises of Hitler sung by some misguided commentators should be taken as indicative of typical liberal views or as typical products of liberal doctrine. Some legal positivists have been liberal in their general political theory, some have not. There is nothing in the positivist's theory of law (of the sort of law he is talking about) that should make it difficult for him to distinguish bad laws from good laws, and jurists of that school have not hesitated to make the distinction. Certainly, on the one hand, a Christian can recognize his obligation to obey the laws of a state, even those laws embodying commands which seem to him essentially immoral. No state could exist in a Christian community whose Christian citizens acted on the assumption that they were obligated to obey only those laws which their Christian consciences approved. And certainly, on the other hand, there is nothing in the positivist's definition and discussion of law that implies any unusual limitation on the right of a citizen to express his moral condemnation of a law, or any unusual limitation on his right to disobey or resist rulers who rule unrighteously.

It is difficult also to see why liberals should be blamed for the misguided utterances of Messrs. Gerard, Churchill, and Rothfels. Mr. Churchill seemed (to the present writer and to other ordinary liberals) wrong in his praise of Hitler, and wrong ten years earlier in his more emphatic praise of Mussolini; and Archbishop Temple (whom Hallowell commends for basing his political views on secure Christian foundations) seemed wrong in his pleas for cooperation with the Nazi regime and wrong in his warm commendation of Mr. Chamberlain's pact with Hitler.[27] The most charitable excuse for such utterances is that the speakers were badly informed as to Hitler's designs. If they had listened to warnings from the liberals they might have been more promptly alert to the signs of Mussolini's and Hitler's terrorism.

Professor Hallowell, in his various charges against the liberals, applies some of his specific criticisms to special sorts of liberals. Thus, he says, "bourgeois" liberals "consider only the material individual"; "extreme" liberalism "denies the existence of divine authority and thus in effect makes every man a law unto himself"; "some" liberals hold "that freedom of speech is unlimited"; and "degenerate" liberalism is "congenial to the rise of tyranny." Yet in many other passages Hallowell appears to regard his extreme characterizations as properly applicable to liberals generally. Thus, he declares, "It was the liberals who taught that might makes right."[28]

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[27] London *Times*, May 24, 1935, p. 17, and October 5, 1938, p. 9.

It can be said of any doctrine that it has its degenerate forms. What Hallowell says of some degenerate liberals can be said of some degenerate Christians. There is utility in pointing out the differences between the pure and the perverted forms of a doctrine. But it is difficult to see wherein there is any more justification for saying that liberals teach that might makes right than for saying that Christians teach that illiberal, un-Christian, doctrine.

Literary critics who claim T. S. Eliot as a special teacher and guide have differing opinions as to what Eliot means, or as to how far he intends to speak clearly, or whether his meanings are merely "too subtle for the intellect." Other readers should, therefore, be cautious in stating their own opinions. To some readers Eliot's description of a Christian society and a Christian life seems (in some passages) over-intellectual; too unemotional; preoccupied with structure and ritual, and ignoring experience; callous in its attitudes towards the ordinary lives of ordinary individuals. In some passages he is explicit in ranking thought above feeling, "truth" above experience, Christian "observances" above Christian conduct or a Christian spirit. "The spirit killeth," he says in one place, "but the letter giveth life."[29] Here, and in some other places, he appears deliberately supercilious in his comments on equality, tolerance, popular education, and any sort of merely humane public policy. His conception of "sin" as some sort of mystical entity, independent of human behavior, seems to make him indifferent to such secular qualities as kindness, honesty, and diligence. "What is worst," Eliot says, "is to advocate Christianity not because it is true, but because it might be beneficial." His Christian ideal would be realized in "a community of men and women not individually better than they are now, except for the capital difference of holding to the Christian faith."[30]

Yet in other passages there are (or appear to be) valid admonitions to liberals and democrats; as in his warnings against both a "slovenly," irresponsible, individuality, and the superficiality and short-sightedness in many of our attempts at economic equalization and mass education. In some passages also Eliot shows great respect for individuality and "the rights of personal life." He points out the various economic and social pressures that "steadily diminish the concrete reality of the individual." He opposes any "censorship," political or moral, of art and literature. Although he would provide for public support of the Christian religion, he recognizes the vagueness and irresponsibility in the use of the term "Christian." Many who call themselves Christian, do not, he says, understand or try to understand what the word means. Some who "vigorously repudiate Christianity are more Christian than many who maintain it." And although he would withold any sort of positive encouragement of dissenters and sceptics, he would let them argue at will. Moreover, he says (somewhat surprisingly), "The Spirit descends in different ways" and "perhaps there will always be individuals who, with great gifts of value to mankind, and the sensibility which such gifts imply, will remain blind, indifferent, or even hostile. That must not disqualify them from exercising the talents they have been given."[31]

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[28] *Main Currents in Modern Political Thought*, pp. 326, 613, 614, 678.

[29] *For Lancelot Andrewes*, Ch. 5 and at p. 89.

[30] *The Idea of a Christian Society*, p. 61.

Thus Eliot warns against any sort of "totalitarian" democracy, with its insistence on "conformity without respect to the needs of the individual." He is no advocate of the sort of unlimited political authority insisted on by some of the critics of liberalism.

Niebuhr's belief that "nothing that is worth doing can be achieved in our lifetime" seems as much of an exaggeration, and as much of a contradiction of Christian doctrine, as the belief, attributed to liberals, that man can successfully act independently of his history, his environment, and the limitations of his own nature. Liberals have not imagined that man is solely a reasoning creature or always sound in his reasoning or right in his moral judgments; and they do not believe that we can ever find perfect solutions or always achieve partial solutions. They do believe that we can learn something from our failures and from our partial successes, in efforts to remove some of the economic, political, and psychological obstacles to partial successes. They see no good reason why such attitudes should be called "fantastic" or rejected as the useless products of eighteenth-century "enlightenment," "nineteenth-century rationalism," and the "pretentious social science" of the twentieth century.[32]

Niebuhr and the liberals he criticizes do not, however, seem very far apart, in their positions on public policy. They should not object to his warnings against self-righteousness in appraising their intentions and against over-optimism in their expectations. In some passages he seems to be urging a sort of mystic pessimism that might lead to despair of any sort of action. But he does urge action. When fortified by a proper understanding of our imperfections, we should act, vigorously, realistically;

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[31] *Ibid.*, p. 43.

[32] *The Irony of American History*, pp. 25, 43, 45, 63, 80.

we should not wait until we are at some never reachable vantage point of guiltlessness. Niebuhr recognizes fully the powerful part we have to play in preserving our civilization from communism, fascism, and our own selfish nationalism and inept liberalism. We must resist Russia's "demonry" as well as our own vanities and frailties.[33] Niebuhr stands with other liberals in urging vigorous action at home in support of religious freedom, free speech, fair law-enforcement, equal protection of the laws, and greater equality of economic opportunity.

## IV. CONCLUSION

Liberalism needs criticism. A liberal may have exaggerated notions of man's capacity and disposition to think and act justly and intelligently. Optimism may obscure the need for creative thought and imagination. Tolerance may degenerate into indifference and irresponsibility. Confidence in institutional reforms may divert attention from reforms of the mind and spirit. The problem of maintaining intellectual and moral freedom and vigor is not merely a matter of bills of rights and checks and balances. Liberalism, which began with strong moral convictions, has no less need for them now, and moral convictions about rights imply moral convictions about obligations. As the right to property is conditioned by an obligation not to use property exploitatively, so the right to speak is conditioned by the obligation to speak honestly and fairly. "There are no costless rights."[34] Liberals should also recognize that in their openmindedness they may have exaggerated notions of the possibilities of freedom and variety. They may underrate the individual's need for participation with others in a community in which there is some basic intellectual consensus and some common devotion to common causes. Philosophers and scientists have reminded us that an individual is the sort of person he is not solely by virtue of his natural endowment and his physical environment, but also by virtue of the sort of conventional relationships in which he finds himself. The standards of conduct and opinions which these conventions express go far towards determining his character and achievement.

The views of some of the critics seem extreme; there are anti-liberal as well as liberal "stereotypes." Few of the criticisms require the liberal to abandon essential ideas in his political theory. He has no reason to object to the characterization of his theory as "mixed" and "middle-of-the-road." It is a Christian doctrine that man is a creature of "competing" dispositions and faculties and that good and evil are "curiously intertwined" in human history.[35] Anthropologists tell us that man is subordinate to his society, yet in essential ways independent of it. Political philosophers have shown how governments exercising unlimited power become incompetent and impotent governments.

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[33] *Ibid.*, Ch. 6 and p. 174.

[34] William E. Hocking, *What Man Can Make of Man* (New York and London, 1942), pp. 49–50.

[35] Reinhold Niebuhr, *Irony of American History*, pp. 157–58.

The liberal does not ignore the pervasiveness and stubbornness of evil in human history. The fact that he may be an earnest advocate of secular reforms is no sign that he feels sure that his reforms will be adopted or that if adopted they will fully or finally solve any problem. It seems an exaggeration to say that there ever was a typically "liberal" belief in "inevitable," "automatic," and "irreversible" progress. In traditional liberal as in traditional Christian political doctrine, the chief reason for the existence of government is found in the need to prevent men from dealing unreasonably or unjustly with one another. Yet it is no contradiction of these beliefs to believe also that normal men know (in Locke's words) that they "should not destroy one another" or "harm another in his life, health, liberty or possessions." And not all Christian theologians make a virtue of exalting doubt and despair above faith and hope. Even Niebuhr agrees that man "is not involved in guilt merely by asserting his creative faculties."[36]

In all societies, we are told by anthropologists, conformity and dependence are combined with individuality and independence. Societies, Professor Ralph Linton says, "work as wholes"; the interests of each individual are subordinate to those of the group; a "community of ideas . . . values . . . habits" holds the group together. "It is this psychological and emotional unity, the *esprit de corps*, which ensures common emotional reactions and makes the individual willing to sacrifice his own interests to those of the whole and to do the things which need to be done even when there is no one watching him." Yet also: "No matter how thoroughly the persons who compose a society may have been trained, they remain individuals, distinct psychological entities," who "retain the capacity for independent thought, feelings, and action"; and these "alternatives," in thought, feeling, and action tend to become more "plentiful" and "varied" in the evolution from primitive to civilized societies. "All life in society is a compromise between the needs of the individual and the needs of the group, and it has the indefiniteness and instability of all compromise situations."[37]

There are special difficulties in the compromises that have to be made between the need of a government for power and the need of the citizen for freedom. "The *via media*," T. S. Eliot says, "is of all ways the most difficult to follow. It requires discipline and self-control, both imagination and a hold on reality. In a period of debility like our own, few men have the energy to follow the middle way in government."[38] Whatever utility there may be in the bare logic of the argument that there can be no sensible combination of majority rule with limitations on majority rule—i.e., you either have unlimited rule by bare majorities or you do not have a democratic form of government—attempts at the combination are made in countries having governments called democratic, according to the proper definition of that word. Professor Latham discusses the lack of "logic" and "precision" in the opinions of our Supreme Court in applying to acts of Congress the Constitutional command that "Congress shall make no law . . . abridging freedom of speech"; and he believes we "win no real victories in the courts" in such matters. He proposes, as a better way to protect our liberties, that we instruct our legislators "in the limitations upon their powers" and that we vote out of office the "rascals" who violate the limitations. This seems certainly better than instructing our legislators, or the people who elect them, that their powers are not limited and that individuals who denounce the rascals show thereby their misunderstanding of the nature of democracy. The liberal believes that there is moral and political wisdom in the constitutional declarations naming "rights" and "freedoms" that "shall not be violated" and "shall be preserved," and that majorities do not necessarily act irrationally in setting up devices against "absolute" and "unlimited" majority rule. He is in agreement with Latham in the belief that "In the struggle to preserve civil liberty, no protection, however slight, should be discarded."[39]

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[36] Reinhold Niebuhr, *Irony of American History*, p. 156.

[37] Ralph Linton, *The Cultural Background of Personality* (New York, London, 1936), pp. 5, 15–16, 23–25, 36; *The Study of Man* (New York, London, 1945), pp. 91–96, 273–74. For similar views by a religious writer, see William Temple, *Christianity and the State* (London, 1928), pp. 99, 101–2, 108, 124–25.

The liberal, of the sort considered in this paper, believes in inviolable rights—in freedoms inviolable in the sense that men ought to possess them, not only as means for the realization of other values, but as values in themselves. He regards the rights as natural to man, as a being distinguished from other animals by his faculties of reason, speech, a sense of justice, and a capacity for independent thought and action. He believes that the rights are inalienable in a political community in the sense that a citizen will not disclaim them if he is to retain his character as a citizen; and inalienable in the sense that the community will not take them away if it is to retain its character as a political community. He believes that order and agreement are goods that may be sought extravagantly, by means that confuse or destroy the sort of consensus upon which the security and strength of a democracy depend.

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[38] T. S. Eliot, *For Lancelot Andrewes* (1928), p. 42.

[39] Earl Latham, in article cited in note 6, above; and see generally Arthur Holcombe, "Natural Limits to the Power of Numerical Majorities" and "The Paramount Principle of the Political Mean" in his *Our More Perfect Union* (New York, 1950), pp. 23–36 and 400–7.

# THE AMERICAN IDEA OF INTERNATIONAL INTEREST

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## I

Disenchantment with moral abstractions as the hallmarks of enlightened foreign policy has recently revived infatuation with the slogans of "national interest," "power politics," and "balance of power." Until the eve of World War II, these ideas had been recessive—at times moribund—for at least half a generation. Naive belief in the efficacy of professions of good will, reliance on weak instruments for effectuating simply noble intentions in the complex realms of policy and practice, and contentment with lofty exhortations, had too often become the directives of policy unconcerned with the harshness of politics or the intricate give-and-take of sustained diplomacy.

Since the Republic's inception, statesmen have proclaimed national interest as the firmament on which our foreign policy rests. To that concept they have repeatedly referred as a guide and rationale for action in foreign affairs. Over the years the concept of national interest has been endowed with a varied and changing content. Therefore, interpretation has been a matter of historical, rather than etymological, enquiry. Certainly, a single dictionary definition will not do. Nevertheless, while dominant meanings at different moments and a long-term trend in the development of meaning are alike discoverable, or imputable, the actual meaning in our own day rests largely on the setting of current controversies. A particular concept of the national interest, therefore, is not "automatically" warranted and acceptable by appeal to tradition and great names, any more than by formal definition.

That national interest is a necessary criterion of policy is obvious and unilluminating. No statesman, no publicist, no scholar would seriously argue that foreign policy ought to be conducted in opposition to, or in disregard of, the national interest. To do so would reveal at once internal contradiction, logically and psychologically.

The problem, therefore, is to discover what, at the given moment or through a meaningful period of time, the national interest is. Indeed, a major difficulty is to define the relevant time-span in the life of the nation whose interest is to be assessed, and to decide on appropriate policy accordingly.

At the one extreme, the advocate of case-by-case decision, emphatic that the hands of the policy-maker and the negotiator must not be tied by specific but lasting commitments or by long-term policies, will argue that flexibility also best serves the long-range national interest. To him, that interest, first defined by an enlightened judgment of what will in each case profit the collective whole, is the product of a series of such decisions made on the basis of information at the moment available or attainable. Insurance of continuity and needful consistency in policy come from the partial identification with the national life and the inherent participation and sharing in it, by those who in each case do the assessing. To define a national interest beyond the ever-operative processes of politics and policy is to limit effectiveness in the pronouncement and pursuit of objectives. It is therefore deleterious to the real national interest.

On the other side stand those who, however much they agree on the need for accommodation and on the importance of utilizing perceived opportunity, still feel that coherence in foreign policy is the prime requisite. In their view, policy must be the consequence of a principled formulation of national interest. For such defined principle, though it often appears as a self-denying ordinance of dubious value, in truth furthers the sustained national interest. On the one hand it provides anchorage and creates confidence at home; on the other it ensures predictability abroad, and gives clear warning to other powers as to what this nation regards as vital.

These two concepts of national interest in relation to time, the one stressing immediate expediency and flexibility, the other a defining of principle based on long-term trend and desired projection, are exclusive when taken as absolutes. But they are not beyond reconciliation when themselves viewed as factors and perceptions to be weighted by statesmen in their endeavor to assess the nation's interest.

Yet behind these concepts lurk more profound divergencies. One extreme viewpoint regards the nation as a real being with an independent life of its own. Its development and full realization are held to be the generic purpose of history, and the imposed and necessary duty of the true statesman. The nation, according to this thesis, is an organic being, engaged in a struggle for life, for strength, for the conquest of hampering limitations, for predominance. Its objectives are first to endure and then to expand. The position takes many forms, is expressed in varied terminology, and has different implications as to inclusiveness or exclusiveness. Yet it results, almost of necessity, in the conviction that there is a real and lasting national interest independent of and apart from the interests of the persons who at any moment constitute the nation. To that interest they must, where necessary, be sacrificed. Indeed, their real obligation is to sacrifice themselves voluntarily; or to conceive the whole purpose of their existence as service to, and absorption in, the greater being, the nation, which alone is properly the bearer of interests.

On this view, the nation's interest is survival and strength. Its chief and primary instrument is force. It is independent, self-centered, and concerned with other nations only externally, in the sense that they are regrettable, yet inescapable, constraints on its pursuit of that interest. There is no community of nations, and there cannot be. Yet, because other nations exist, there are international relations, as there must be foreign policy, which indeed on this definition of national interest becomes the highest concern of the statesman. His objects are to ensure the permanence and maximize the power of the nation. That principle makes any action which supports it, whether by the seizure of immediate advantage or the adoption of coherent and predictable policy, equally correct.

In such a setting the national interest is a clear datum. It is not something springing from institutions and interests within the nation, whose relative importance and value is to be assessed and re-assessed, and whose concerns may transcend purely national considerations and cross national boundaries. Yet, manifestly, a nation is not a talking organism; and in practice such viewpoints tend to the identification of nation with state, and state with rulers or government. Hence the national interest becomes defined as what those in power declare it to be; just as their efficacy in gaining and retaining power rests upon their skill in overcoming or reconciling particular and assessable interests by the use and sale of the very myth of a transcendent national interest.

Reaction against this position, among peoples where tradition has intimately related nation and state, has often followed in the wake of democratization. In such instances the tendency has been to regard the state as instrumental and to insist that the national interest which it serves must proceed out of the conscious interests and the free loyalties of its citizens. Yet the centrality of the state, so general a fact of European life, has meant that though the state may be reduced to instrumentality in doctrine and constitutional law, it has remained the locus and expression of a national interest under which specific interests are to be subsumed and subordinated.

On this thesis, national interest was, and is, an affair of statesmanship, to be defined and implemented by statesmen, and to be discovered and given a simple and unified content by purely political arts and processes. The formulation of such interest, and the statesman's task, were no doubt helped by an inheritance of traditional policies, not to mention stereotypes for their popularization and continuance. Politics might be constitutionalized and concepts of a superior national being or of the national interest as the will of rulers rejected. But national interest involved a continuity of principles, relationships, and objectives. That very continuity at once permitted needful flexibility in short-term operations and prevented incoherence through mere opportunism. Men were no doubt persons and the pluralism of group life was a reality. But centralization and citizenship were primary. And, by being largely unquestioned conditions of self and of associations, they jointly encouraged harsh definition of national interest and an acceptance of its paramountcy, just as they limited and directed debate over its content and established beyond dispute the proper organs and persons for its implementation.

## II

The American experience has been very different. From the colonial beginnings, and certainly long before the Revolution, many of our leaders were critical of monarchy. Indeed, by Puritan doctrine itself they were antimonarchical, whatever their dependence on the throne for the very bases of their legal existence and their territorial rights. The experience of colonial life in thirteen colonies carved from a wilderness was inimical to centralization, as to a dominantly political loyalty to the state; and later colonial experience with the mother country reenforced these tendencies. The Revolution itself completed the work and fixed an underlying pattern. Henceforth the defining of national interest in terms of the state, whether monarchical or the heir of monarchy, was made lastingly difficult.

Yet, as noted above, the idea of national interest was developed early in these United States, and has remained a touchstone for the measuring of policy. The reasons are easy to divine. The Founding Fathers were both revolutionaries and self-made heirs of the doctrine that statesmanship was the highest, and appropriate, calling of the natural or aristocratic leaders of society. That view had developed out of the Whig Revolution, in which landed and commercial leaders inherited, by default and as the culmination of a revolutionary movement, the major and essential functions once the prerogatives of Divine Right monarchy. As successful revolutionaries, our Founding Fathers were driven to organize public power as they sought lasting safety for their creation. Separating themselves from the country whose legal possession they had been, they were forced to proclaim that, whatever the peculiarities of this country, it was a nation-state belonging to the system of states developed by and in Europe from the Peace of Westphalia on. The new nation so conceived had a claim to status, interests, and policies which it was the task of its statesmen to implement and define. Moreover, as revolutionaries and republicans welding a whole out of separate colonies, they were driven to use the concepts of a nation, a national people, and a national interest for organizing purposes, internal not less than international. It is well to remember that the United States, prior to the French Revolution, was the first country to stress the modern concepts of nationality and national independence, though it happily and long avoided the European corollary, nationalism.

The social and geographical facts of American life, coupled with distrust of distant political authority and function, did not prevent our early statesmen from developing a concept of national interest interpreted by a government endowed with exclusive authority in foreign affairs. But these facts did inhibit any tendency on the part of ordinary men to esteem their loyalty and nationality as primarily political and oriented towards the federal government. Men as citizens might meet their legal obligations thereto, and might bear arms in furtherance of the nation's policies, though until after the Civil War they performed the latter duty with little enthusiasm. Even in our own day military service remains for most a regrettable, though real, necessity which, in the name of national interest, interferes with the normal pursuit of individual interests, ideally held to constitute in their sum the more appropriate long-term interest of the nation. We also note that the now almost irrelevant right of the citizen to bear arms, though conceived as being in the national interest because it provided a reservoir of men trained in the use of arms, was in truth doubly anti-statist. It rested on fear of professional armies, as well as unwillingness to rely on them. For they were usually the instruments of governments which identified national interest with their own conceptions of public power and prestige. It rested, secondly, on a popular sense that a citizen body accustomed to use arms was a wholesome check on a possible official temptation to act oppressively, and to equate official ambitions and convictions with the interests of the people constituting the nation.

✓ X In general, Americans have rejected the idea of a nation as a real super-being, endowed with independent life and interests, as they have escaped the European concept of the state. Certainly the view that men should be sacrificed to the one or the other, or to the two in combination, is repulsive to Americans; as is the conviction that public authorities are the primary factors in the formulation of concepts of national interest. There have, it is true, been nationalistic movements in the United States. But, apart from their striking differences from European movements, due in part to the absence of equally powerful neighbors, they have generally been short-lived, and have seldom aroused widespread enthusiasm. Thus the first major movement of this sort after the Constitutional period, severely criticized by transcendentalists and by interests differently oriented in geography and commerce, ended with the deepening of sectional conflict and the defection of Calhoun. The nationalism of the Civil War period and after, though it made a genuine impress on constitutional concepts of the nature of the Union, failed to popularize alien ideas of sovereignty and nation-state. In part this was true because the very forces supporting the Union were anti-statist, individualistic, and voluntaristic. Even the later impact of German ideas in the creation of American academic political and social science failed utterly to convert us to the European doctrines of state and nation, since their proponents were driven by outer circumstances and inner conviction to a defense of liberty, of property, and of enterprise beyond the purview of government or state.

The American regards his government as instrumental. But he does not, like the European who shares this view, propound a simple monistic view of national interest by making the state his central symbol of loyalty and identification. Like Europeans he reverences the symbols of the collective public order, such as the flag. Yet loyalty to his nation, though real and deep, is little related to the panoplies of public life. And the occasions when he does thrill to the acts of statesmen, because they embody the sense and reveal the majesty of his nation, are rare.

Rather, American loyalty tends to center around institutions, from the family outward; around sections and scenery and ways of life; around personal freedom and enterprise; and around neighborliness. These interests may be loosely summed up as the much-vaunted American way of life which, for all its varieties of connotation and despite all abuses committed and selfish interests defended in its name, symbolizes a central core of experience, emotion, and attachment. It is not a statist concept; it is not identified with government; and, though it includes our political mores, it is not, in feeling, political. Yet it indicates the fundamental concerns which it is the national interest to protect and promote.

Om.

Foreign policies proclaimed or pursued by statesmen are judged to be in the national interest when devoted to such protection and furtherance. Hence, glory and aggrandizement of the nation-state are not, for Americans, synonymous with national interest. Moreover, because that interest is societal, not political, it is possible to conceive of the state purely instrumentally and, simultaneously, to admit that final, as well as instrumental, satisfactions can come from identification with and sharing in the national interest. This sharing in the national interest may be enjoyed without men being driven to glorify a super-being whose claim is sacrifice, whose usual ultimate instrument is force, and whose chief impact upon its own members is external and impersonal. The point may be made negatively by noting the relative difficulty in this country (as against England and parts of Europe) of associating the basic emotional elements of local attachment—the particular sights and sounds and smells so dear to the poet—with a devotion to political institutions and to sacrifice in furtherance of national policies, whether achieved by means of propaganda or by free and unconscious linkage on the part of individuals.

This peculiar conception of the American self is a product of a long-lived individualism, of local community, of the open horizons associated with the frontier, of the vast range in place and in ways of living of the American adventure. Such pluralistic diversity renders old-world concepts of national interest, with their stress upon power politics and balance of power, meaningless and inapplicable to the American situation.

Admittedly the American concept is more imprecise than these, and it therefore necessitates continuous redefinition and re-compounding. This fact, when combined with the inherent unpredictabilities of our political-governmental system, especially as it relates to foreign affairs, creates difficulties for our own and for foreign statesmen, as well as for the analyst who looks for patterns and formulas. Yet, in the modern world of conscious, awakened and aspiring peoples it has one great potential advantage: the tying of national interest to a fluid way of life. True, it may result in exclusive selfishness from an endeavor to preserve the privileges of that life, products of a combination of favorable circumstances and creative energies. But it offers some hope that America's root concern, its ultimate concept of the national interest, may be the spreading and sharing, with due adaptation and without intolerance, of its societal blessings. We may thereby avoid a narrow and resented search for the magnificence of imperial power, always at last a snare, a delusion, and a pointless sacrifice of persons.

In any event, this American idea, which provides a basis for avoiding a naive utopianism unrelated to the particularities of interest and attachment and a power politics whose course is lasting statism on the one hand and tensions beyond peaceful solution on the other, seems to hold superior promise in a world where world conquest and serene isolation are equally delusive aspirations. Thus in the present bi-polar world, the alternatives offered to lesser powers are acceptance of a totalitarian statism or alliance with a coherent yet pluralistic societalism.

## III

In the realm of international economic relations, however, it is signally difficult to obtain coherence in national policy without lapsing into statism, and while avoiding the dangers of commitment through irresponsible individual venturings. American governmental responsibility for the defense of the nation's interest without means to control the conditions which shaped its contours was the central problem to which Charles A. Beard addressed himself in his *The Idea of National Interest.* Indeed, the difficulty of achieving a satisfactory solution may have been one of the reasons for his ultimate and peculiar brand of isolationism. He sought, but did not find, a modern equivalent of the earlier Hamiltonian realistic concern with national interest. In Hamilton's day, that interest was to be secured by the protection of American industries, at the time infant, or barely conceived. But the long-term consequence of the Hamiltonian system, combined with the impact of the teachings of Adam Smith and his heirs, has conspired to bring about a purely selfish and isolationist economic individualism internally, and support of a free trade competitive individualism externally, as the development of the Open Door policy attested. In combination, the two created the bases of material prosperity, promoted a release of American energies in enterprise, and provided an extraordinary industrial (as well as agricultural) foundation for American world power.

But the accompanying evils created Beard's prime problem, still far from solved. It was necessary to find an equivalent for Hamiltonianism in the realm of exports, as against imports. Such an accomplishment required governmental interference in a field where the tradition of national interest was one of free enterprising, by individual or corporation, regardless of state considerations. Earlier, such activity had profited the nation. But under the new circumstances, as Beard perceived, some exports might not do so, since they could radically change the power relations of other nations to the United States, as well as kill American foreign markets for consumer goods. Thereby they would both decrease our own internal consumption and lessen the volume of employment. In general terms, Beard's solution was a moral equivalent to Hamiltonianism in the export field. Its essence was to be a governmentally-directed and even governmentally-planned system of exporting goods and capital, carefully devised to protect economic welfare at home. Simultaneously, it was designed to encourage, discourage, and direct, insofar as the United States was able, the economic development of other countries to the extent that they depended on us for capital, for consumer goods, or for markets. The object was to further our own national interest, conceived as stable and secure power.

That teaching, again, was a radical revamping, tailored to suit the conditions of the modern world, of Fichte's doctrine of *The Closed Trade State.* Fichte had recognized the difficulty of promoting the material and cultural well-being of a people when the productive and distributive bases of their economy were subject to random and unpredictable calculations. Aware of these uncertainties, which were increased by the whims of traders and enterprisers and by the actions and reactions of foreign citizens and governments, Fichte had argued the need for a completely enclosed system of national economic life under state control. The benefits of trade must be exchanged for the blessings of planning, stability, and security. The objective of his design was long-term individual welfare even more than national power. Economic isolationism was the one sure means to prosperity and peace, and so to the real conditions for the development of persons. His was a system of avoiding shocks by minimizing variables.

Such a project, though it would have involved some immediate self-sacrifice, might conceivably have been practicable at the dawn of industrialism; while gains in social justice and in avoidance of mass misery might well have compensated for losses of wealth or of power. Even so, unless the scheme had become the common policy of nations, the one adopting it would in all probability have suffered from insecurity by generating inadequate power, in the sense of potentially available force, as compared to other nations. When Beard wrote, in any event, industrialism was well developed, world trade a long-standing fact. His search therefore aspired to a nationally controlled trade in a world of international economic relations. Dependence on others for various materials, as well as some dependence on foreign markets, made an absolute economic isolationism undesirable, if not impossible. Thus national calculations aimed at adjusting variations in the economic conditions and policies of other peoples became an inevitable factor in policy. The essence of such policy was predictive planning of foreign trade and investment for the protection and furtherance of national economic and political power. It was the latter that was proclaimed as the national interest, defined as exclusive and over-riding, but also by its very statement not truly isolationist.

Beard's formulation of the problem showed a profound insight. Actually the inter-war years revealed a radical contradiction. Economists and economic conferences professedly sought decreased national restrictions on multilateral trade. But tariffs and other forms of state interference with free international enterprise continuously increased. The free trade ideal, to be achieved by the mere abdication of governments in that sphere, was an irrelevance and an impossibility in a world organized under national sovereignties, however interdependent. It was doubly so, given the general development of state social welfare policies and the restoration (and exaggeration) of the primacy of the political. National interests, not less than international interest, did dictate planning and control, under the auspices of major collective units of international economic relations. It was impossible politically to leave their protection and advancement to free, yet national and politically-minded, legal persons, on the supposition of an unaided hidden hand and the doctrine of comparative advantage.

Nevertheless, Beard's solution was a hazardous one from the viewpoint of internal institutions. As subsequent events increasingly proved, it was an impractical solution. For America had to promote its interest in a world where it possessed leadership and the obligations of leadership. Yet it had to compete with a vastly different, and highly aggressive, ideology under conditions where its professed policy, as implemented in practice, became an article for export, and not for home consumption only.

As a Republican devoted to the early American conviction of the importance of statesmanship and the centrality of statecraft, Beard was in no sense alarmed at the necessity, implicit in his doctrine, of a large area of control over the direction of enterprise, where such enterprise might affect the national destiny. Certainly he was not to be numbered amongst those members of the party who defend as primary the right to absence of governmental intervention in their quest for profit and power. He had a profound sense of the American ethical tradition, as he had a yet more profound American national pride. These rendered the aspirations of acquisitiveness secondary and subordinate. Yet he did not squarely confront the statist implications of the course which he advocated. Rather, he accepted, too readily, the view that political and governmental control or limitation of selfish interests would give proper primacy to the national interest (defined as national power) without destroying that liberty of personal and community life which he likewise held dear.

## IV

Unfortunately, however, prevalent definitions of national interest, though they combine the insights of Beard and Hans Morgenthau, are in their realism less than realistic. The search for power, and for escape from the delusions of moralizers who believe that the enunciation of fine universal principles is enough, is an insufficient basis for foreign policy in the contemporary world. No matter what the particularities of peoples, there is a shared desire for economic betterment, just as there is a shared aspiration towards increased opportunities for persons to develop and fulfill themselves, however great is the current willingness to forego, or the current incapacity to enjoy, Western freedom. The practicable alternative means to such material betterment are freedom within the constitutional social welfare state or planned industrial development under dictatorship inspired by communist ideology. For better or worse, the United States and Russia are the respective symbols, and the effective leaders and sources, of these ways of social organization; as they are the alternate roads to achievement of the desired objective. Under such circumstances, the consequence of realistic national interest is failure abroad; while at home it leads to the ultimate enthronement of the organic nation-state, with statism as its present-day corollary.

Yet the supreme difficulty Beard confronted, the impossibility of adequate national statesmanship for America as a world power under conditions of private judgment and action in the international economic realm, is not met by noting the inadequacies of his own solution or the related, and greater, inadequacies of a more narrowly political and statist realism. Nor is a neatly compacted answer available. It may be in order, however, to suggest the context for an answer, and thereby to help direct attention to the need for further enquiry and for institutional innovation and development.

The major new perspective on international relations and foreign policy during the last twenty years—a perspective which Beard himself helped to create—is the recognition of the essential unity or wholeness of politics. Foreign affairs have ceased to be exclusively or dominantly a matter of formal political diplomacy, as they have ceased to be shrouded from the eyes of the vulgar. Strictly speaking, there are no longer foreign affairs, wrote Salvador de Madariaga in a discerning tract of 1937, there are only "world affairs."* For the relations between nations have become a central concern, and a dominating condition, in men's planning of their lives and the conduct of their business. Again, this development was a necessary consequence of modern intercommunication and of contemporary technology. It was pushed farther by the conflicts of ideology of the period, and the aspirations they betokened. It has been accelerated by wars and threats of wars; though the recent atom and hydrogen bombs have created an over-emphasis on international relations as the first, and often unique, criterion of a nation's conduct of life.

The consequence of this trend has been an unfortunate drive, of which this country now feels the full impact, towards nation-statism: constitutional democracy tends to abandon its own vision, and to become a totalitarianism without dictatorship. It does so, moreover, under conditions where the survival and minimal security of citizens, of cities, of the earth and what men have created thereon, is the over-riding consideration. Thus other nations, rather than pests or human waste of resources, comprise the immediate danger. Having moved from a condition where others were external and often unimportant, we have gone to the opposite extreme, where involvement with others and the hostile policies of others become the highest, and highly resented, determinant of our own doings and way of life. In some sense, indeed, the extremes meet: foreign affairs as national policy divorced from daily life, and foreign affairs as the essence of daily life, alike tend towards a statist conception of national interest, and a power realism unrelated to moral considerations and to a genuine doctrine of a nation's international interest. But in the United States, unlike Europe, owing to the chance of geography and the need and opportunity for internal development, the involvement of citizens through foreign policy was formerly casual and occasional: in the main, the concept of national interest was internal and societal, and demands of the state through government rare. Today, on the other hand, such involvement is continuous, nerve-racking, and destructive of the societal nation. The American enterprise is forced, despite resistance and resentment, towards the integral unity of the nation-state under conditions where war is total, and the outbreak of hostilities is always just around the corner.

Nevertheless, the conception of policy and politics, international and national, as one whole of interdependent parts offers a theoretical framework whereby to escape extremisms which lead to glorification of power, governmental power politics, and the imposition of the myth of the nation-state in the name of realism. Conceptualized broadly, it promises a basis for preserving and refining the essential concept of societal nationality to fit modern conditions, with the state as the instrumentality, an approach bedded in the American tradition. Additionally it offers an operational technique for furthering American interests and ideas as world power consonantly with that tradition, with the wider Western and Christian tradition, and with the over-riding criterion of universal ethical principle. At the same time it provides grounds for the avoidance of utopian doctrines of absolute and, of necessity, content-less moralities. Such doctrines offer no substitute for policy, yet create the delusion that they are themselves by mere enunciation adequate policy. Hence they beget the reaction to hard-boiled realism, which we have shown to be contemporaneously unrealistic.

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* *Theory and Practice in International Relations* (Philadelphia, 1937), p. 105.

## V

Clues to the philosophical principles which insist that the state is purely instrumental, yet inevitably positive and concerned with the protection and preservation of social welfare in its whole unified range of activities, are not hard to discover within the course of American democratic thought. The individualism which leads to release and effective utilization of men's energies and the institutional pluralism which is so vital a core of American life are hymned in the poetry and prose of Walt Whitman, who intuits their ethical laws and their grounding in native mores, as in the folkways later dear to Sumner. Their philosophical underpinning is to be found in Peirce's and in James' Pragmatism, as these are developed by John Dewey, whose Instrumentalism insists on the diverse democratic public as the ultimate source, and the proper beneficiary, of the nation's interest. Long before these men, however, Tocqueville, in what remains the greatest analysis of the American way of life, stressed its fundamentally societal and sociological character, as against the European state.

Nevertheless, these emphases do not provide adequate grounds for compounding in proper relation the social, political, and governmental, which must be done if public authority is to properly serve the nation's total, and internationally-oriented, interest, as formulated by and for the going American social order. Here the clues, in philosophy and political philosophy, are to be found especially in the teachings of three men: Josiah Royce and, among contemporaries, W. Y. Elliott and Robert MacIver. The first provided an Idealism related to the pluralism and energy of American life, in his doctrine of loyalties which, expanded, permitted a political expression of the people and a statesmanship consequent thereon, yet which avoided, by reason of the over-riding and unifying doctrine of loyalty to loyalty, at once the compromises of narrow expediency and the threats of monistic statism. For that doctrine transcended, yet embraced, the purely *political* concept of allegiance and obligation.

Elliott, in attacking the modern teaching of political pluralism as at once socially disruptive and to some degree intellectually irrationalist, was quite aware of the dangers and difficulties of the orthodox doctrine of the sovereign state, and even more aware of the anti-intellectualism and inhumanity of organismic corporative concepts of nation and national destiny. Consequently he tried, under the rubric of co-organism, at once to acknowledge the necessity of final political decision as basis for action and to insist on the reality of vital and participating groups and interests in the society, whose diverse drives must be included and harmonized as far as possible in the process of statecraft. He desired to avoid a mere tug of forces without clear outcome in policy or practice. He desired not less to avoid the evils of statism, and the sacrifice of men to the myth of the state.

MacIver is an ardent defender of human liberty and foe of totalitarianism. He is aware of the omnipresence and the necessity of government, and of its inevitable wide range of functions if it is to serve our needs today. Yet, aware of the dangers of abuse of power and of indignities done to men in the name of the state, he has defended the state's high claim and function even as he has insisted that it be an instrument of a more ultimate, more vital, though less precisely definable, social whole.

These ideas, germane to American experience, inspired by the more generic traditions of Western thought, and relevant to the great problems which have confronted men in modern industrial society, clearly provide the bases for a hitherto undeveloped synthesis which will reveal the creative leadership in the American conception and practice of man in society. At home, such a synthesis will provide an adequate rationale for the avoidance of statism and narrowed national interest as a basis for foreign policy, will allow the adequate and appropriate synthesis of governmental integrative function with societal national interest; and additionally will further and underwrite the unification of politics internal and external. Such an outlook will result in a national concept of American international interest which can further and protect the American way of life. Likewise, by its appeal to universal principles of human dignity, embodied in its own practice, it can make an appeal to others. Thereby it may promote real American interest by its manifest relation to their needs and aspirations. Specifically, such a theory will provide grounds on which to combat narrowing and ungenerous isolationism and the isolationist imperialism (if we may dare the paradox) which is so ready an outcome of those so-called realistic teachings of national interest designed to avoid the supposed pitfalls of moral principle as a basis of policy. For it is our contention that the extremes which meet, and have a common root, are not, as Professor Morgenthau would persuade us, isolationism and utopianism, but isolationism and that doctrine of national interest rooted in power politics as selfish national calculation and balance of power, of which he is the most forceful contemporary exponent in this country. At the same time, such a theory avoids also the dangers of that moralistic utopianism which Morgenthau and others rightfully condemn. For it stresses the life of American society, still particular though deeply rich and varied. It accepts man's limitation by time and place. It refuses to accept the monistic ultimates which, when they do not glorify the state, yet promise perfectibility of men on earth.

## VI

The issue of institutional implementation remains. That issue is how to get expression of, and consideration for, the insights and interests at large in American society at the points of governmental policy-making and specific decision.

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Stated otherwise, it is how to get formulated as a coherent whole the societal concept of the nation's generalized interest. No less compelling in importance is how to avoid a purely government-inspired formulation, executive and administrative—a concept put forth as the United States' national interest, and in due course turned into a statist line in the name of unity, effectiveness, prestige, and power.

At the outset, it is important to emphasize here, more than elsewhere, that perpetual vigilance remains the price of liberty. But the pre-condition of vigilance is the clear perception of the tradition, of its vitalizing force, and of its usefulness. Thereby we may combat in ourselves, in our politics, and in our government, that lack of confidence which goes ill together with American power. Americans can escape the degradation consequent on cynical or hard-boiled realism, which is in truth the degradation of democratic dogma, only by perception of their larger heritage and aspiration. They must reject in the name of their living past an attitude of cowed timidity which in its blustering poorly simulates national strength.

At the political level of party politics and the legislative way of life, Americans should therefore reject the dogma and unwisely self-imposed constraint of the touted bipartisan foreign policy, sometimes questioned as to its reality, occasionally indicated on grounds of partisan expediency, but too little challenged as to its ethical goodness. Such a policy is no doubt requisite in times of collective emergency, of clear and present danger to the national whole. It is also appropriate, if defined as intelligent and enlightened abstention from irresponsible partisanship, as loyal support of necessary financial and material means to implement particular policies at the moment in effect, and not in the short run to be changed. The concomitant of such support, however, does not involve abandoning criticism of those policies or unwillingness to suggest and struggle for the adoption of constructive alternatives. Beyond emergency and magnanimous loyalty, bipartisanship becomes a failure to transmit and transform into dynamically fluctuating policy the major elements which collectively constitute the societal national interest; and so it is abdication of a major brokerage function of the party system. For, whatever the ceremonials of formal partisan voting, the total processes of legislation and of executive-legislative relations are not such as to have as their normal end-products laws or policies which represent a strict majority view and majoritarian attitude, with the minority utterly at loggerheads, excluded from consideration, and outragedly rejecting *in toto* the actual decisions made. Fortunately, American constitutionalism goes deeper than formal checks and balances, judicial review, or guaranteed rights. To abandon party planks, party alignments, and party debate in the realm of foreign affairs is in truth to lose the advantage of dynamic and organic continuity in policy, to achieve at best a static and uncreative unity, to forego the confidence which comes from vital debate, and to sacrifice the enlightened national feeling to what is at root a statist line. For the vital center is only vital when it is emergent from the interplay of diverse interests which voluntarily, and perhaps unconsciously, share an over-riding common concern. Imposed as political duty, and by the eschewing of free debate, that center is in fact devitalized, as it is in its consequences deleterious. Moreover, on the thesis here proclaimed that foreign and domestic policy are facets of one whole, partisanship in the one and bipartisanship in the other constitute on their face a ludicrous position, impossible to maintain for long. If it could be maintained, moreover, it could be executed only at the price of a pointless and harmful incoherence in total policy.

Bipartisanship constitutes in essence an internal appeasement which, in its lack of courage and conviction, can be more harmful than external appeasement. It does so whether it involves the following of administration policies by the minority party or that curious developing brand of "me too-ism" on the part of the majority, of the executive, or of the relevant administrative departments under the executive, evidenced in the endorsing and proclaiming of allegiance to opposition doctrines of national interest and preachments of policy. In the realm of policy, moreover, it begets an extreme oscillation between appeasement and aggressiveness in our dealings with other nations. Nor is this result accidental. For bipartisanship, which developed out of crisis and constitutes a superb democratic equivalent to emergency power and to dictatorship, has encouraged emergency thinking and the conviction of insecurity, and has helped to make them a constant in our lives. In consequence it has contributed to the prolongation of emergency and to the failure to diminish international tensions. For its artificial consensus has, in the name of realism and loyalty, prevented that healthful enquiry and that ability to dissent without becoming suspect.

Bipartisanship helps to create and to strengthen stereotypes which inhibit thought and breed violent emotion. Inevitably it becomes the handmaid of a dogma of utopian catastrophism. Such catastrophism is inimical to effective policy. Moreover, as a substitute for the proper conduct of diplomacy, it is as unsatisfactory as the utopianism of pure and practically undefiled moral aspiration. A return to the normalcy of partisanship in all spheres of politics is a basic need, then, for the effective pursuit of America's international interest. Such a return might also decrease the excessive compensatory strafing over domestic policy and so, by moderation, aid the creation of a real vital center.

At the level of execution and administration, where functional representation and group consultation so peculiarly belong, institutional innovation is especially requisite to avoid the statist concept of national interest. The objective must be to render viable and to harmonize, in a coherent and dynamic pattern of policy, the diverse elements which in their sum comprise the national interest of the American social order. Roughly, what is needed is an equivalent to Calhoun's doctrine of the concurrent majority, divorced from the sectional basis and the narrowed concept of interests of that suggestive teaching. Essentially, the task is to bring into the formulation and execution of day-by-day policy, with due regard to security considerations, the economic, social, and cultural interests first clearly seen as parts of our political order by A. F. Bentley. In this context certain existing organizations which function in our domestic affairs, largely as a result of our present world position and our defense activities, may be relevant by loose, but suggestive, analogy. As an example, local draft boards operating our selective service system might be cited. Local agencies not composed of experts, these bodies of volunteers express the sense and judgment of their communities in the light of determined national needs and under general instructions and specific restraints. Different again, but also loosely relevant, are the War Labor Boards, national and regional, of the Second World War, and the recent Wage Stabilization Boards, with their tri-partite memberships. These brought into decision-making and policy discussion representatives of the two interests, labor and industry, most specifically affected, and of the public-at-large.

Elsewhere, but directly related to foreign policy, the State Department has a special section whose function it is to encourage and inform private organizations devoted to the better understanding of UNESCO and of the American role therein. Here, indeed, the relationship is different, and in form one-way, while the function itself is promotional and informational, not policy-making or administrative. Yet in practice such interchange tends to become one of mutual influence. Even where the intent may be to popularize official attitudes, the outcome is to aid expression of citizen views and to further the conscious spread of concepts of the international interest of the national society. Again, while the widespread practice of using private experts as consultants on policy is very different in intention and impact from functional participation in administration, it tends towards similar consequences. The same applies to the use of qualified private persons on the Voice of America program. In truth, we already possess, however rudimentary in form and inadequate in quantity, some of the practices and operational techniques most suited to attain the dominance of a societal, rather than a statist, concept of national interest.

The remaining problems are, therefore, to broaden and systematize consultation and participation and to create a recognized and institutionalized share in responsibility on the part of the citizen and his representatives. Curiously enough, a return to partisanship in our own international politics and a systematic development of consultation and participation in the development and execution of policy by those affected can actually aid the solution of one set of real problems. Thus some moderates in the name of effective diplomacy seek a return to the realism of the old European balance of power system, even though they are in no way enamored of the doctrine of amoral national interest. These critics have seen a connection between a moralizing utopianism which has often degenerated in practice into a "holier than thou" attitude on the part of America, and the false democratization of politics through the appeal and organization of mass media. Such media, dependent on lowest common denominator appeals, enthrone the simplest moralities and indignations. And in the sphere of foreign relations they induce pressure on diplomats and diplomatic conferences, to the frequent detriment of the nation's international interest.

The indictment is largely warranted; and it is psychologically easy, especially for those who have a decent awareness of history, to contrast the present with the past. By a simple, yet logically not necessary association, they relate secret diplomacy by trained diplomats, the balance of power system, and fairly stable peace achieved through unexciting adjustments made without publicity, and consequently without hurt prestige and lost face. They contrast such a climate of action with the present-day conduct of international relations, whether between individual nations or in the collective conferences of the UN, under klieg lights; and the constant tension, indignation, crisis, and conflict which are consequent on a necessity to be absolutely right. Too readily forgotten is the fact that, though the techniques of an earlier diplomacy had much to commend them, the search for open covenants rested precisely on the ground that commitments made in secret by an élite affected the fortunes and the future of citizens whose felt interests as the nation were unconsulted. The system was in truth conducive to the political idea of national interest, and is peculiarly antithetical to the societal concept of international interest, the new and slowly evolved American contribution by example to a better world order. What is more, as politics became democratized, while policy remained untouched by the peoples' hands, there developed a dichotomy between internal and international affairs. For the sake both of internal and international well-being, it is today vital to bring about a new integration, whereby policy becomes one whole.

## VII

A return to times past is no solution. The problem is to determine the areas, and define the techniques, for the conduct of calm and unobserved diplomacy by responsible statesmen. In this setting the primary area for open debate and for the general formation and expression of public opinion is the sphere of principle and overall policy. The dominant mass opinion, it should be noted, is not an expression of a societal national interest, but tends towards a power and statist line, at least under conditions of bi-partisan policy. The result is a democratic totalitarian dogma rather than a genuine vital center. Yet the danger involved in secrecy, in absence of publicity, is precisely a statist concept of national interest made and defined by the élites responsible for the day-by-day conduct of affairs. Whether despite or because of intelligent understanding of other peoples, and skill in dealing with them, such élites, unless properly checked, may develop a professional interest which they identify with the national interest on the basis of their rectitude and expertness in its service. It is at this very point that the idea of relating the layman to the processes of policy administration is so significant. For in that role he becomes an informed critic of the unpublicized conduct of detailed negotiations and an insurance against abuse or confusion of different concepts of interest. Simultaneously, he becomes a broker between government and public, and a source of enlightenment which can help diminish the facile dogmas induced and sustained by mass media. Finally the alert layman aids the politician in bridging the gap and diminishing the tension between misguided yet—to the political leader—imperative mass demands and responses and the difficult requirements of our international interest.

Looking at its main contours, American leadership from Bretton Woods to the Korean crisis has at root embodied a recognition that the interests of these United States are essentially international or corporate, not exclusive and nationalistic. It has revealed a consonance between the American antistatist tradition of freedom and statesmanship on behalf of the societal nation, and the aspirations of other peoples to overcome want and to gain political security as conditions for the release of human energies and the enjoyment of human culture. It has demonstrated that today a realistic concept of national interest must rest upon a genuine morality, in theory and practice, of respect for the finite particularity of peoples. It has perceived that peoples share a common humanity. In a transitional stage from old nationalism to new world order, they strive uncertainly, tentatively, adaptively, and yet determinedly, to create institutions and mechanisms for the furtherance within diversity of that humanity. It has proclaimed, however uncertainly, that in such a world the United States, creator of new patterns for the more effective realization of ancient human insights, and possessor of power for leadership, must interpret its national interest as international interest, in a situation where practical success and moral obligation are consonant and interdependent.

This article is dedicated to the more effective pursuit of such objectives. Whether it is better to abandon the concept of national interest because of its unfortunate connotations of exclusiveness, and its availability as a rationalization to forces of timidity which look backwards and oppose interest to morality; or whether it is possible to win the symbol and transform its connotations is, perhaps, uncertain. To believe, however, that, as a strategy, it is desirable to identify the term "national interest," as its leading proponents tend to do, with a search for power and security divorced from moral considerations is, we submit, an unacceptable premise for an enlightened, successful American policy. To reverse this trend, and to orient the concept of national interest toward a genuine morality seems, indeed, a matter of transcendent importance. American national interest must be re-defined as its international interest, under which are compounded the particular and the universal, power and ethics, the realism of idealism. For today security and sharing are interdependent, and the freedom and fulfillment of persons, the central promise of industrial civilization, depends on both.

# PARTY PREFERENCE AND ATTITUDES ON POLITICAL ISSUES: 1948–1951

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The widespread interest in understanding the political behavior of the American electorate has been served by a number of different methodological approaches. One of the most widely known and used is the analysis of *aggregate voting statistics* along the lines indicated by the work of Louis Bean. Major problems susceptible to study through aggregate behavioral measures include those related to the consequences of urbanization, population migration, drastic economic crisis or long-term change, or important international developments. Trends in voting behavior and regional differences in voting fall within this type of analysis, with census tract information and political sub-division voting statistics providing much of the relevant data for investigation.

A different approach to the study of political behavior is provided by the analysis of *data on individuals*, information pertaining to the behavior of identifiable persons. This approach allows flexibility in the ultimate units of analysis. The use of data on individuals not only provides such gross information as the percentages of people forming large groups (Democrats and Republicans, well-informed and poorly-informed) in the population, but it also provides information about various characteristics of these groups within the population. And the criteria by which social or political groups are defined need not be restricted to political boundaries. Data are also available pertaining to intra-group changes which may cancel out or otherwise go unnoticed if the level of analysis is confined to the study of aggregate statistics. Inasmuch as our interest is in understanding (as well as predicting) political behavior, these more subtle shifts are the source of important information about individuals and individual differences.

The development of probability sampling and the refinement and application of sensitive interviewing techniques make it possible to gather data on individuals from which valid generalizations may be made for entire populations or sub-groups within populations. The richness of data about individual attitudes and personal characteristics is enhanced by our ability to employ complex analysis designs which allow us to exercise necessary controls in our search for crucial interrelationships.

Much of the better known work in this area has been concerned with sociological or, more narrowly, personal-social data. A great many characteristics such as age, income, education, religious affiliation, occupation, information level, and population class have been studied as variables related to various aspects of political attitude and behavior.

One of the most forceful studies of sociological factors and their relationship to political participation and party preference has been published as *The People's Choice*. The key to the orientation of this study (actually two studies, since the second edition of the book reports on both the Erie County study of 1940 and a national sample study of 1944) is provided by the authors' statement that "Social characteristics determine political preference."[1] A careful study of the Erie County research and a recent analysis of similar data gathered by the University of Michigan Survey Research Center suggest, however, that, although social characteristics were used to explain party preference in Erie County, the generalized usefulness of such explanation is limited.[2] Manipulation of sociological materials has not produced successful predictions of whether or not individuals will vote. Moreover, such techniques for prediction as were devised by the directors of the Erie County study failed in the SRC study to predict the party preference of some 40 per cent of those respondents who did vote.[3]

The discussion which follows concerns a study which shifts the focus from sociological to social-psychological variables. The use of sociological variables in the study of political behavior must not only be refined, but it must be complemented by the use of some of the other variables which can be expected to play a role in the development of politically relevant attitudes and behavior. Activity such as voting must eventually be studied in the fullest context of all relevant sociological and psychological factors. We shall here be concerned with but one more aspect of this total context: some relationships between attitudes on political issues and expressions of preference for political parties.[4]

Two national surveys conducted by the University of Michigan Survey Research Center provided the data which we shall examine. The first of these was conducted in two parts; the first part preceded the national elections of 1948, and the second part followed immediately after the elections with a reinterview of the original respondents.[5] The second study was a study of national political and economic issues, conducted in June, 1951.[6] Both studies contained requisite information in two areas: a) past and current political party preference of the respondents, and b) respondents' attitudes on policies of the national government.

## I

The data concerning political preference in these two studies provided two indicators of party preference. In classifying people as party preferrers, each individual was described in terms of both a past and current party preference. Consequently, instead of speaking of Democrats or Republicans or Independents or Non-voters (the four basic categories of preference with which we shall be concerned), we shall, throughout the first part of this discussion, refer to Democrat-Republicans (people who were Democratic in 1948 but Republican in 1951) or Non-voting Independents (Non-voters in 1948 who in 1951 still did not express a definite major party preference) or to the 14 other similar groups.[7] Information provided by the 1951 attitude study defined the 16 groups in terms of their responses to two questions: 1) "In the last presidential election about half the people voted and half did not. Did you vote?" (If yes) "For whom did you vote?" 2) "If a presidential election was held today, do you think you would vote Democratic, Republican or for some other party?" The answers to question 1 were grouped to form four categories of people: a) those who had voted Democratic, b) those who had voted Republican, c) those who had voted for a minority party, and d) those who had not voted. The answers to question 2 were also grouped to form four categories: the Democratic, Republican, and Independent (plus a few minor party) preferrers and the potential Non-voters. Each respondent was thus classified twice, and his party preference was defined as a combination of these classifications, thus producing Republican-Democrats, Non-voting-Independents, Democrat-Democrats, etc. (In each instance, the first of the labels refers to the respondent's 1948 vote, the second refers to his party preference in June, 1951.)

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[1] P. Lazarsfeld, B. Berelson, and H. Gaudet, *The People's Choice* (New York, 1949), p. 27.

[2] Morris Janowitz and Warren E. Miller, "The Index of Political Predisposition in the 1948 Election," *Journal of Politics*, Vol. 14, pp. 710–27 (Nov., 1952).

[3] *Ibid.*

[4] The data used here are from the series of studies conducted by the Public Affairs Program of the University of Michigan Survey Research Center. For a somewhat different treatment of some of the same data, see George Belknap and Angus Campbell, "Political Party Identification and Attitudes Toward Foreign Policy," *Public Opinion Quarterly*, Vol. 15, pp. 601–23 (Winter, 1951–52).

[5] A. Campbell and R. L. Kahn, *The People Elect a President* (Ann Arbor, 1952).

[6] Survey Research Center, "Public Reactions to American Foreign Policy" (July, 1951).

A central problem of the research was to trace the correspondence between party preference and political attitudes. Before doing this, however, it was necessary to develop a summarizing measure of political attitudes. The attitudes to be used were chosen from the same 1951 study of American foreign policy. In that study the following six questions were asked:

1. "In general are you satisfied or dissatisfied with the way the United States has been acting towards other countries?"
2. "Do you think our troubles with other countries are mainly our own fault or not?"
3. "Do you think the people running our affairs with other countries have done a pretty good job or do you think that some other people could have done better?"
4. "Do you think the United States should send troops to help protect Europe against Communism?"
5. "Do you think we did the right thing in getting into the fighting in Korea last summer or should we have stayed out?"
6. "In the disagreements between President Truman and General MacArthur about how to carry on the war in Korea, who do you think was most nearly right?"

The assumption in ordering attitudes on these items was that responses to this battery or any similar battery of questions about national policies would provide an "index of support for the national administration." This index would be a device by which groups of individuals could be ordered; it would be

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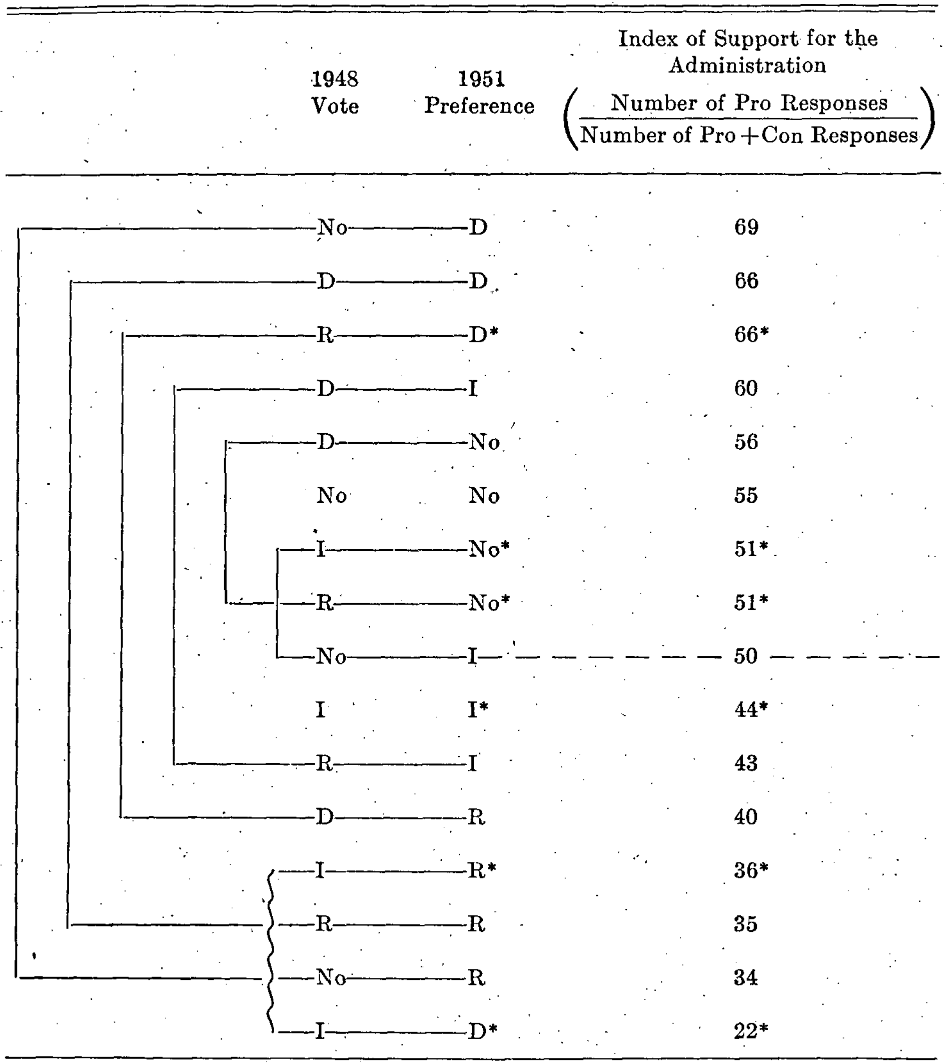
[7] For the second study which we shall discuss (see below), the time of the "past" and "current" party preferences is changed to "usual voting behavior" and "vote in 1948," and the same two-fold description of preference is used.

TABLE I

PARTY PREFERENCE GROUPS ORDERED BY INDEX OF SUPPORT FOR ADMINISTRATION POLICIES



| 1948 Vote | 1951 Preference | Index of Support for the Administration $\left(\frac{\text{Number of Pro Responses}}{\text{Number of Pro} + \text{Con Responses}}\right)$ |
|---|---|---|
| No | D | 69 |
| D | D | 66 |
| R | D* | 66* |
| D | I | 60 |
| D | No | 56 |
| No | No | 55 |
| I | No* | 51* |
| R | No* | 51* |
| No | I | 50 |
| I | I* | 44* |
| R | I | 43 |
| D | R | 40 |
| I | R* | 36* |
| R | R | 35 |
| No | R | 34 |
| I | D* | 22* |

* Groups with a very small number of members, creating N's of less than 15 and providing presumptively unreliable indications of group attitudes.

based on the relative amount of support or opposition which members of each group indicated for each separate policy item.[8] An index of support for the national administration was constructed by summing the responses for each group of party affiliates on all six national policy issues. The percentage of pro-administration support in each group was then computed by dividing the sum of the pro-administration responses on the six issues by the sum of both pro and con responses.

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[8] Three means of determining "relative support for the national administration" were tried: 1) the absolute difference between the percentage of the group membership which indicated support for the policy and the percentage of the group membership which indicated opposition, 2) an average rank ordering of the groups derived from combining the rank order of the groups in terms of the percentage supporting an issue within each group

Each group of party preferrers thus received a score based on its attitudinal responses in support of the administration policies and expressed as a per cent of the total number of its attitudinal responses. Following the logic dictated by this concern with only the relationship between the attitudinal commitments and party preference, the "Don't Know" or "Not Ascertained" responses (the responses involving no reported attitudinal commitment) were not used in this scoring procedure.

Table I indicates the first findings when the 16 party preference groups were ordered on the continuum of administration support with respect to the six policy issues enumerated above.

The symmetrical pattern produced by this ordering was one of the most interesting features of the rank order. Also of interest was the apparent demonstration of the efficacy of grouping individuals by party preference in order to bring together people who are homogeneous with respect to political attitudes.

The ordering of the groups of party preferrers by responses to the attitudinal items provided support for one of our most crucial hypotheses. The assumption was made that combining responses to six issues on national policy (issues on which a pro-administration and anti-administration point of view could apparently be distinguished) would provide a pro- to anti-administration continuum. The ordering of groups of party preferrers was interpreted as evidence of a positive relationship between attitudinal commitment and political behavior. To be sure, the precise nature of the relationship was at this point no clearer than was the meaning of the symmetrical array. However, the symmetry of the array reflected a particular structure of types of party preference; and the attitude scores of the groups composing the array suggested that the structure was related to political ideology or attitude structures.

From this it may be deduced that expressions of attitudes on issues of national governmental policy should possibly be considered not merely as attitudinal expressions *per se*, but also as politically partisan acts. If some common factor of political significance had not existed in the six items used in the test, the relationship between party preference and attitude as illustrated by the symmetrical array of party preferrers would not have existed.[9]

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with the inverse rank of the groups in terms of the percentage of each group opposing an issue, and 3) the ratio of the number of group supporters to the total number of the group who took a stand on the issue (which could also be expressed as the ratio of the percentage who supported the issue to the total percentage who took a stand on the issue). Inasmuch as we were concerned only with those members in each defined group of party preference who actually expressed attitudes on the relevant policy items, method 3 was used throughout.

[9] The possibility that the particular combination of the six available issues was accidentally responsible for the neatness of the array was examined. Various combinations of

The array positions of these groups of party preferrers could not be readily explained by the available data relating to the personal-social characteristics of individuals. That is, the distributions of age, income, education, occupation, level of interest, information level, religious preference and place of residence (described by five categories on a rural-urban continuum) did not vary among the groups in the manner which would be necessary for those characteristics to be the factors underlying the array. The symmetry of the array cannot be accounted for by any of the above variables.

A possible partial exception to this generalization was found in the age distribution of the ND and NR groups. In these groups, a relatively large number of members were in the 21–24 age group. These were undoubtedly mostly young citizens who could not vote in 1948, but who were taking an active interest in politics in 1951. The young people did not, however, provide the attitudinal responses which placed the entire ND and NR groups in the extreme positions. As a matter of fact, the elimination of the 21–24 age group from the ND and NR groups in the 1951 study resulted in increasing the uniqueness of the attitudinal positions of the remaining ND's and NR's. With the young respondents removed, the ND score rose from 69 to 71, and the NR score correspondingly dropped from 34 to 32 (see Table I).

A review of the political character of some of the 16 groups suggested, however, that the array provides a basis for considering some of the possible relationships between attitude formation and party preference. Two major hypotheses about the relationship between party identification and attitudes on foreign policy have been outlined elsewhere by Belknap and Campbell.[10] Inasmuch as party identification was determined by Belknap and Campbell by statements of party preference in response to question 2 in the 1951 attitude study, above, these hypotheses are relevant to the data under examination. One of the hypotheses holds that "the party serves . . . as a means of instrumenting a point of view regarding foreign policy which [has been] arrived at as a result of a variety of internal needs and external influences (including party activities)." The other proposes that "the party serves . . . as a reference point to which [people] look, consciously or otherwise, for [a guide to] their [own] position on foreign policy questions."[11]

In accord with the first hypothesis, people who currently approve the various actions of the United States in international affairs will express this approval

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three or more issues were tested and all of them produced about the same distribution of groups. Some variations were observed in the central portion of the distribution, but it could be assumed that such variance was a product of the decreased reliability which resulted from decreasing the number of issues included in the index. The consistency with which any group of three or more issues produced the same array of political groups can, in fact, be exploited to demonstrate the usefulness of this approach to the analysis of both intra- and inter-political party shifts.

[10] Cited above, n. 4.

[11] Belknap and Campbell give major attention to the second of these hypotheses. Their discussion proceeds from the same general body of data which is under consideration here, i.e., data from the Survey Research Center, June, 1951 survey of the adult population.

of policy by support of the administration and of the Democratic party; those who oppose American foreign policy will indicate their opposition by active support of a party which also expresses opposition to the same policy, in many instances the Republican party. Conversely, the second hypothesis suggests that once a person has become a Democrat, whether through psychological identification or as a formal member or informal supporter, he will subsequently adopt the Democratic position on political issues, including issues involving foreign policy. The supporter of the Republican party will, in turn, acquire attitudes expressing opposition to the foreign policy program of the Democratic party and administration.

It is to be expected that neither of these hypotheses can serve alone as an adequate explanation of the relationship between attitude and party preference. Rather, we can expect that various types of political change, in attitude or party preference, will be variously related to one or the other of these major theses about political activity.

For example, the hypothesis that support of a party is dependent upon the congruence of attitudes of the supporter and policies of the party may be suggested as an explanation for the array positions of the DR and RD groups of party preferrers. To apply the hypothesis, the nature of the change in party preference among the members of these two groups must be deduced, in part, from information not provided by the June, 1951 survey. Of major importance is the fact that since 1948 there has been a change in the leadership of the Republican party. There has also been a diminution of the bi-partisan character of American foreign policy and an accentuation of party differences on foreign policy. Thus, it may be that some of those Democratic voters of 1948 who were not in favor of the policy acts undertaken with bi-partisan support, and some of those Republicans of 1948 who *were* strong supporters of those same policy actions have since been faced with a change in the political stage upon which they must play. The Democratic voters have been presented with an opportunity to express their dissatisfaction with foreign policy, and they now prefer the Republican party because a leading faction of that party promises policy more in line with their own long-standing attitudes. The Republican voters, in turn, have been forced to switch to the Democratic party to establish allegiance, once more, with a party whose foreign policy is acceptable to them.

The data do not provide direct verification that this explanation does, in fact, apply to a majority of the members of the DR and RD groups. It could be argued, for example, that a random distribution of the 1948 voters could be expected to produce as many party changers as non-changing regulars (assuming that all 1948 Democrats and Republicans chose, at random, to prefer either the Democratic or Republican party in 1951). Some of the party changers who were isolated in this study may have been only those people for whom random, unknown factors were relevant to party preference. A much more precise thesis has been advanced which holds that party switchers are politically uninvolved and uninterested.[12] Consequently, they are given to changing party preference rather capriciously. However, both of these explanations of party switching fail to account for the relative positions of the DR's and RD's in the total array. Attitudinally, these groups are almost as extreme as the regular party members, the DD's and RR's. Had the DR's and RD's been relatively neutral in their attitudes on foreign policy, either the "random distribution" thesis or the "uninvolved and uninterested" explanation might have seemed adequate to account for the change in party preference. The clarity of both groups' attitudinal positions suggests, however, that, for a preponderance of these people, party did serve as an instrumentality, a means of expression, for attitudes on foreign policy.

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[12] See *The People's Choice*, p. xviii.

The discovery that the DD's and RR's occupied extreme positions in the array was not unexpected. These two groups can probably be accurately described as composed, by and large, of reliable "party regulars." Individuals whose involvement in politics is minimal might be expected to avoid admitting either having voted for the losing party in the last election or preferring the party currently (at the time of the survey) under severe, even violent criticism. The RR's did not disassociate themselves from the unsuccessful party of 1948, and the DD's did not disassociate themselves from the party suffering attack from many quarters on many issues. We do not know whether the DD's and RR's wavered or shifted between November, 1948 and June, 1951, but after two major political events, the presidential election and the dismissal of MacArthur, member of both groups apparently maintained a consistent party preference.

DD and RR party preferrers were, moreover, quite homogeneous attitudinally and provided strong support for the foreign policies of their respective parties. Also, it should be recalled that foreign policy was not an overt political issue during the 1948 election campaign. Consequently, although we know nothing of these people's party preference prior to 1948, we can assume that choice of party in that year was not necessarily motivated by attitudes on foreign policy issues. As Belknap and Campbell point out, the highly partisan character of foreign policy in 1951 was unmistakable, and, as Table I indicates, the attitudes of the DD and RR members on foreign policy clearly reflect the newly established partisan positions. Thus, it may in turn be suggested that party served as a guide to, or a source of, attitudes on foreign policy for a preponderance of DD's and RR's.

For the groups not yet discussed, we must be less specific in our speculations about their possible relation to the hypotheses. In support of the "party as an instrumentality" hypothesis, perhaps the most that could be concluded about the ND's and NR's would be as follows: A combination of internal and external changes between 1948 and 1951 resulted in making support of a political party appropriate for the expression of newly salient attitudes on political affairs. A newly perceived importance of foreign policy could, of course, produce an enthusiasm and fervor which would be manifested in a high proportion of party-oriented attitudes. Recently acquired attitudes on politically partisan issues may have pushed the members of the ND and NR groups over the "threshold" of political participation. Choosing parties as vehicles for desired participation could be expected to follow. There are, however, equally valid reasons for assuming that the "party as a source" hypothesis is involved in explaining the ND and NR array positions. In the first place, *operationalizing* party identification by using only voting or voting intention as evidence of identification is unduly restricting. Although there has been but little study of the phenomenon of party identification, it may be assumed that voting is only one of many possible expressions of identification. At this point in the development of political behavior theory, even "avoidable" non-voting should not be interpreted as an absence of party identification. Despite their non-voting of 1948, ND's and NR's may yet be as strongly identified with their parties as are the DD's and RR's. In the second place, no information is available concerning the reasons for the ND and NR non-vote in 1948. Illness, bad weather, inability to meet residence or other legal voting requirements or a host of less common factors may have prevented voting. By intent and desire, the ND's and NR's may have been Democrats and Republicans, respectively, in 1948 who were not able to vote.[13] There is little reason, on the basis of the examined data, to emphasize the greater applicability of either major hypothesis in explaining the ND and NR relationships.

The DI and RI groups may well be people for whom candidates are more important than either attitudes on issues or identification with party. They are predominantly "Independents," in 1951, who professed to base their hypothetical voting behavior on choice among candidates. They do not share the enthusiasm of their fellow party members of 1948 (particularly the DD's and RR's) for the respective party positions on foreign policy. At this point in time they had not wholeheartedly adopted their parties' positions. But, neither did they seem to be searching for a party to express extreme attitudes; the primacy of a candidate in their choosing of a party does not suggest party implementation of an attitudinal position.

The data considered here and in the Belknap and Campbell article are not inclusive enough, however, to rule out the possibility that a still different combination of the two hypotheses can accommodate the somewhat conflicting conclusions which may be drawn from the two discussions. A most obvious gap in the data to which we have referred stems from the absence of information about attitudes related to domestic policies. Although foreign policy attitudes were clearly related to party preference, the relationship may be a function of a third major variable, namely, attitudes on domestic policy. With this possibility in mind, it can be suggested that attitudes toward such issues as taxation, economic controls, communism in government, administrative corruption, or the welfare state may be the factors responsible for changing or solidifying party preference. There is much impressionistic evidence which suggests that such issues are much more immediately relevant to most voters, are much better known through wider personal contact with taxation and controls or through publicity given to communism and corruption, and may thus play the major role in determining party preference.

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[13] Although ND and NR scores on support for the administration in 1951 did tend to be more extreme than the scores of the DD's and RR's, the differences were not of a magnitude sufficient to preclude the possibility that sampling error or some other fortuitous factors produced them.

The absence of data on the June, 1951 respondents' attitudes toward domestic policies and on respondents' evaluations of the relative importance of domestic and foreign policy issues forestalls immediate investigation of this possibility. If, however, domestic policy is, in fact, more important to the American voter than foreign policy, we might conclude as follows: a) Increased relevancy and saliency of domestic policies have, in recent months, resulted in major attitudinal changes. b) Attitudinal changes related to domestic policies have produced marked changes in party preference. c) Changes in party leadership and the international situation have, at the same time, accentuated party differences on foreign policy. d) Following the domestic policy-inspired changes in party preference, attitudes on foreign policy have been acquired by the new party members.

This argument, however, seems much more appropriate as an explanation of the DR and RD switches or the ND and NR activation than as an explanation of the differential attitudinal positions occupied by the total range of party preferring groups. In fact, to infer that the observed ordering of the sixteen groups of party preferrers on attitudes toward foreign affairs was basically an ordering on attitudes toward domestic affairs is to infer a clear-cut relationship between these attitudes which is seldom demonstrable.

In summary, the data examined in this study and in the Belknap and Campbell study strongly suggest that important relationships exist between party preference and attitudes on political issues. The findings from the present study, in particular, accommodate the hypothesis that the party serves as an instrumentality for points of view regarding political issues which have been arrived at as a result of a variety of internal needs and external influences. The data examined here do not provide other than inferential evidence that strength of party preference, or party identification, is directly related to strength or clarity of attitudinal predisposition; moreover, there is basis for only the most general speculation concerning the dependence or independence of party preference on political attitudes. Some portions of the above discussion, and the tabular presentation throughout the study, draw attention to the possible dependence of party identification on political attitudes. Nevertheless, relationships which might be expected to follow from the hypothesis that party serves to guide people in forming political attitudes were also found to exist in the present study. It may be suggested that whatever conflict there is between the two hypotheses and the two interpretations of the data can be resolved in at least two ways: 1) under varying conditions and circumstances, political attitudes and party identification may be of differential importance to people, and 2) different attitudinal areas (such as those relating to domestic policy or to foreign policy) may, at different times, be of differential importance to people. Further exploration of the relation between voting behavior and intention and party identification, and the gathering of more complete information on respondents' political histories are also of paramount importance.

## II

At this point a replication of this analysis was essential. Therefore, before attempting to verify some of the more refined meanings which might be attributed to the major findings, the next step involved exploring similar data from a completely different research project, the study of the 1948 election which was mentioned earlier. Again, six questions on national policy matters were utilized to provide the measure of pro- or anti-administration attitude. These questions were:

1. "Do you think rent control should be kept on or should it be dropped?"
2. "Some people think the government ought to do something to control prices and others say that government controls just make matters worse. How do you feel about that?"
3. "Have you heard anything about the Taft-Hartley Act?" (If yes) "What do you think ought to be done about it?"
4. "In general are you satisfied or dissatisfied with the way the United States has been acting toward other countries?"
5. "Some people think that since the war the United States has gone too far in concerning itself with problems in other parts of the world. How do you feel about this?"
6. "Are you satisfied or dissatisfied with the way our country has been acting toward Russia?"

The questions relevant to party preference were concerned with "usual" voting behavior and voting behavior in 1948. The classification of the November, 1948 respondents was made on the basis of their responses to the two questions: 1) "If you have voted in a presidential election before this one have you usually voted Democratic or Republican?" and, 2) "In this election, about half the people voted and half of them didn't. Did you vote? Whom did you vote for?" The responses to question 1 were grouped to form four categories of people: a) those who usually voted Democratic, b) those who usually voted Republican, c) those who had voted for more than one party or for a minority party and d) those who had not voted before. Since the study was concerned with major party voting behavior, all respondents in category *c* were described as Independents.

The second phase of the investigation was thus conducted with a completely different sample (although still one representing the adult, non-institutional American population), responding to five different issues (only the question on satisfaction with American foreign policy was asked in both studies), at a time clearly removed from the study first described, 1948 instead of 1951. The same methods were used for constructing the index of support for the administration, and the same general method of defining party preference in terms of both an historically past and a more contemporary expression of political preference was followed. The gross findings are depicted in Table II.

The balanced pattern of pairs of Democratic and Republican preferrers was

TABLE II

| Usual Vote | Vote in 1948 | Index of Support of the Administration $\left(\frac{\text{Number of Pro Responses}}{\text{Number of Pro+Con Responses}}\right)$ |
|---|---|---|
| I | I* | 74* |
| No | D | 74 |
| D | D | 73 |
| R | D | 71 |
| D | No | 71 |
| No | No | 70 |
| I | D | 69 |
| I | No | 66 |
| I | R | 58 |
| R | No | 55 |
| D | R* | 53* |
| No | R* | 50* |
| R | R | 49 |
| D | I* | 40* |
| R | I* | 20* |

* Groups with a very small number of members, creating N's of less than 15 and providing presumptively unreliable indications of group attitudes.

again prominent. There were, however, apparent changes from the pattern observed in the first study, including the reversal of order of the RR and NR groups, and the shift in relative position of the ID, IR and DI, RI groups. These shifts and inconsistencies may have been a function of unreliably small numbers within the affected cells in one or the other of the studies.[14]

Barring the above-mentioned differences between the two patterns, it was felt that the constancy with which the larger groups maintained their relative positions further supported the major hypothesis. Attitudes on issues of national policy did indeed provide the basis for a general scale of support for the national administration. In the two different studies there was a marked similarity of ordering among comparably defined groups of party preferrers as they were ordered on the basis of attitudinal commitments. The content of these attitudes could, in each case, be described in terms of supporting or opposing policy promoted by the Democratic administration under President Truman. It could be assumed that the time interval separating the two studies (two and one-half years) was not a causal factor relevant to this stage of the analysis.

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[14] See notes accompanying Tables I and II on small cell populations.

Exploration of the meanings which can be attributed to the array of the 1948 party preferrers is most difficult because the attitudes involved both domestic and foreign policy issues. At the same time, the use of both categories of issues

TABLE III

| Party Preference Groups | | Index of Support for the Administration $\left(\frac{\text{Number of Pro Responses}}{\text{Number of Pro+Con Responses}}\right)$ |
|---|---|---|
| No | D | 70 |
| D | D | 69 |
| R | D | 68 |
| I | D | 66 |
| I | No | 63 |
| D | No | 62 |
| No | No | 61 |
| D | I | 60 |
| I | I | 57 |
| I | R | 54 |
| R | No | 53 |
| No | I | 50 |
| R | I | 43 |
| D | R | 42 |
| R | R | 41 |
| No | R | 35 |

demonstrates that domestic as well as foreign policy issues provide attitudinal continua on which groups of party preferrers maintain a particular order.[15] This demonstration encourages the assumption that almost any set of issues on national policy (issues on which a pro-administration and anti-administration point of view can be distinguished) can provide a pro- to anti-administration attitude continuum. The major implication of this is that the meaning of the arrays is possibly much more general than our earlier discussion of attitude content suggested. The analysis and replication may be said to have involved two specific instances of the general case in which a random sample of people ordered by attitudes toward the national administration exhibited a unique ordering in terms of party preference. In other words, in two completely different surveys people's attitudes toward political issues were similarly related to their preference for political parties.

At this point it was suggested that combining data from the two specific cases would serve the function of providing larger N's for many of those groups whose scores had been described as unreliable because they had varied from the expected pattern. The reliability of specific group measures would be improved, and a "standard" array of the party preferrer groups could be established. The two studies were, therefore, combined in the same manner by which items were combined for each of the separate study analyses.[16] The combination did, in fact, substantially increase the size of all groups except those forming the pairs ID-IR and DI-RI.

The general case, constructed by combining the two specific cases from the 1948 and 1951 data, is illustrated in Table III. The symmetrical distribution of the various groups was, of course, to be expected inasmuch as the similarity of patterns in the separate studies provided the justification for the formation of the above combined distribution.

The assumption that deviations from the completely balanced or symmetrical array were the consequences of unreliable data seemed to be affirmed. The only deviations in the aggregate pattern were provided by the two pairs of groups,

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[15] The analysis of various combinations of three issues (instead of six), as described in footnote 9, was also made on the data from the 1948 study. The results were comparable in that any three issues whether they were three domestic, three foreign policy, or a combination of two of one and one of the other, produced similar orderings of party preferrer groups. Again, variations of rank ordering were observed in the middle-range groups—but it could be assumed that such variance was a product of decreased reliability which resulted from decreasing the number of issues included in the index.

[16] For example, the DR group from the first study and the DR group from the second study were considered as one group of people. They had in common the experience of shifting from Democratic to Republican preference at some time prior to (or, conceivably, during) an SRC interview. Each member of the group had also responded to six items eliciting attitudes toward national governmental policy. The group had 6N opportunities (where N = group membership) to verbalize these attitudes (and thereby demonstrate political partisanship). The group score was computed as the number of pro divided by the number of pro and con responses. Again the DK and NA responses were not included in the scoring because of our interest in relating attitudes and party preference rather than in relating party preference to the absence of attitudinal commitments.

ID-IR and DI-RI. These groups were not greatly strengthened by combining the data from the two studies, and were each reliably represented in only one set of data.

## III

This "standard" or "aggregate" array promises to be useful in many studies of political behavior. Instead of restricting analysis of political change, i.e., shifts in partisan allegiance or in attitudinal commitment, to analysis of that change which takes place immediately before an election, the meaningfulness of change over longer periods of time (specifically, at least over three or four year intervals) can be studied. Changes such as those produced by election campaigns can be related to changes occurring during the between-election years. The relationship between change in attitudes and change in political behavior can be studied with some assurance that order, not happenstance, and psychological structure, not socio-economic factors alone, underlie both attitudinal commitment and political behavior.

As suggested earlier, attention can also be focused on different kinds of change. Twelve of the sixteen groups of party preferrers (all except the DD, RR, II, and NN groups) represented types of change ranging from that related to possible minimal involvement (changes from Non-voting to "Independent" preference) to that related to possible maximal involvement (change from voting for party X to voting for party Y). Although changers have been characterized as the politically disinterested and uninvolved,[17] one of the consistent findings of this analysis was that political change was accompanied, or preceded, by very clear attitudinal commitments congruent with the partisan change. The ND's and NR's consistently were attitudinally the most Democratic and most Republican, respectively, of all groups of political affiliates. The party switchers, likewise, as mentioned earlier, had attitudinal scores that closely identified them with the core of their newly adopted parties.

If further study verifies the apparent stability of the order of groups of party preferrers when they are arrayed attitudinally, the information which may be collected on attitudes may disclose much of value about the "politicalness" of suspected issues in party politics. For example, an additional analysis of the 1948 Election Study strongly suggested that while foreign policy was not an overt issue in the 1948 election, the rank and file voters were apparently divided, even then, along party lines on foreign policy questions. By 1951 the partisan differences were much more pronounced, but the change from 1948 was primarily one of degree for many people.

At this point it seems evident that during at least two periods in the past four years, groups of party supporters as defined by two statements of party preference, were uniquely distributed attitudinally on a pro-anti national administration continuum. In projecting future studies greater attention can be given to the search for explanations of the voting behavior of persons within each of the groups forming the attitudinal distribution. This past work can also be used as a point of departure for historical or dynamic studies of voting behavior. The problems of studying changes in voting, changes in political partisanship, and changes in attitude on national policies can be conducted with at least one point fixed for comparison.

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[17] See n. 12.

### A SUMMARY OF THE FINDINGS

It was found that defining party preference by the use of statements concerning past and present political behavior produced groups of respondents which assumed a unique rank order when the groups were placed on a continuum of pro-anti attitudes toward issues relevant to national politics. The rank ordering produced by reference to attitudes toward national governmental policies was observed to be constant (within variations possibly related to the unreliability of small numbers in the groups producing the variations) whether foreign policy issues alone or a combination of foreign and domestic issues were used to elicit the expressions of attitude.

The consistency of ordering existed for two different samples of the national adult population surveyed at two different times, 1948 and 1951. Variations of the kinds of past and present party preferences which could be combined from the data available did not produce significant variations in the ordering. That is, whether past preference was taken to be "usual voting behavior," "vote in 1944," or "preference in 1948," with present preference being either "vote in 1948" or "preference in 1948"; or whether past vote was "vote in 1948" with present preference being "preference in June, 1951"—all of the permutations produced groups which followed the same ordering when ranked by pro-anti attitudes on the selected national policies.

# THE IMPLEMENTATION OF THE ITALIAN CONSTITUTION

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The new Italian Constitution was written by the 556 deputies the Italian people elected to their first Constitutional Assembly on June 2, 1946. The Assembly approved the Constitution on December 22, 1947, by a vote of 453 favorable, 62 opposed, and 31 absent. After this approval the Constitution was promulgated by the Provisional President of Italy, Enrico de Nicola, and became effective ten days later, on January 1, 1948. Numerous evaluations of the Constitution are available,[1] and it is not our purpose here to duplicate this work. We are concerned solely with discovering to what extent the Constitution was actually in effect during the four and one-half year period following its promulgation and with explaining, if possible, why there has been so much delay in implementing some of its basic provisions.

What we shall find is that some enabling legislation was passed by the Constitutional Assembly in the interim period between the effective date of the Constitution and the election of the first Parliament in April, 1948. Parliament has implemented a few more constitutional provisions, but vast and basic sections of the Constitution are still ineffective, owing to Parliament's inaction. To a lesser degree the administration and the courts are in a position to implement the Constitution. The administration has done little to this end, and although the courts have taken the Constitution more seriously than the other branches of the government their work has often been conflicting and inconclusive. The President's power to implement the Constitution is operative almost entirely in times of emergency or by tradition. Constitutional emergencies did not arise in this period and traditions have not been established; thus the President's effect on the Constitution has been negligible.

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[1] Studies in English include Mario Einaudi's section in Fritz Morstein Marx, *Foreign Governments* (New York, 1949), as well as numerous articles by the same author; and John Clarke Adams, "The Government of Italy," in Adams, *et al.*, *Foreign Governments and Their Backgrounds* (New York, 1950). Studies in Italian include Piero Calamandrei and Alessandro Levi, *Commentario sistematico alla costituzione italiana* (Florence, 1950, 2 vols.); Antonio Amorth, *La costituzione italiana* (Milan, 1948); Giorgio Balladore Pallieri, *La nuova costituzione italiana* (Milan, 1950); Gastone Baschieri, Luigi Bianchi D'Espinosa, and Carlo Giannattasio, *La costituzione italiana* (Florence, 1949); Emilio Crosa, *Diritto costituzionale* (Turin, 1951); Paolo Biscaretti di Ruffìa, *Diritto costituzionale* (Naples, 1949); Vincenzo Falzone, Filippo Palermo, and Francesco Cosentino, *La costituzione della Repubblica italiana illustrata con i lavori preparatori* (Rome, 1948); Pietro Virga, *Diritto costituzionale* (Palermo, 1950). Studies in French include Emilio Crosa (ed.), *La constitution italianne de 1948*, in *Cahiers de la fondation nationale des sciences politiques* (Paris, 1950).

In order to explain this state of affairs, we must take into consideration how, by whom, and in what political climate the Constitution was written, and the nature of its content.

## I

The members of the Constitutional Assembly were, on the whole, of high caliber. They included distinguished scholars such as the philosopher Benedetto Croce, the economist Luigi Einaudi, the Latin scholar Concetto Marchesi, the mathematician Gustavo Colonnetti, and the law professors Piero Calamandrei, Tomaso Perassi, Costantino Mortati, Giuseppe Dossetti, Egidio Tosato, and Giuseppe Grassi; prominent pre-Fascist statesmen, including former Prime Ministers Vittorio Emanuele Orlando, Francesco Saverio Nitti, and Ivanoe Bonomi; former Foreign Minister Count Carlo Sforza; outstanding Partisan leaders, such as Ferrucio Parri and Luigi Longo; and almost all of the post-Fascist political leaders.

The Constitutional Assembly was dominated by three parties, the Christian Democrats (Catholic), the Communists, and the Socialists. Four other parties, the Liberal, the Labor Democratic, the Republican, and the Action parties, which were also anti-Fascist and basically democratic, were active in drafting the Constitution. Owing to the prestige of their leaders, these four parties had, in fact, greater influence than their numbers merited. The other minor parties were mostly of a reactionary nature and had little influence in forming the Constitution. No single party had a majority in the Constitutional Assembly, and no stable coalition was formed that could impose a unified program. Therefore a separate majority was formed on each major issue. The Christian Democrats were usually the nucleus of this majority, but its other component parts varied according to the issue at stake.

A body of over 500 persons is not well adapted to constitution-making. The Assembly was therefore wise in delegating, on July 15, 1946, the task of drafting the Constitution to a committee of 75 of its members, chosen to represent the parties in proportion to their strength in the Assembly. In general the parties were represented on the committee by their abler men.

The Seventy-five elected as its president the respected jurist and pre-Fascist deputy Meuccio Ruini, a member of the Labor Democrat party. The Committee then divided itself into three sub-committees, charged respectively with drafting the parts of the Constitution dealing with (1) rights and duties of citizens, (2) the constitutional organization of the State, and (3) social and economic rights and duties. These sub-committees elected as their presidents respectively the Demochristian Umberto Tupini, the Communist Umberto Terracini, and the Socialist Gustavo Ghidini. The second sub-committee, which was the largest, was again subdivided to permit the creation of a special section dealing with the judiciary, headed by the Republican Giovanni Conti.

When the various sections and sub-committees had finished their work, the Seventy-five appointed a committee of 18 to coordinate the Constitution and put it into final form for presentation to the Constitutional Assembly. The

Eighteen was composed of the presidents of the committee and its subdivisions, of outstanding law professors such as Calamandrei (Action party), Perassi (Republican), Grassi (Liberal), and Tosato, Dossetti, and Mortati (Christian Democrats), and of top political figures such as Togliatti and the Liberal party leader, Marchese Roberto Lucifero. The Seventy-five adopted the re-draft made by the Eighteen with only slight modifications and presented it to the Assembly on January 31, 1947. During the rest of 1947 the Assembly discussed, altered, and after 173 sessions finally approved the Constitution.

The Constitution was not submitted to the electorate for approval. This saved the Assembly from the possible embarrassment of having the voters reject the Constitution it had approved, as had occurred in France shortly before. On the other hand, the Italian Constitution was deprived of the prestige it might have gained through approval by popular vote. Such prestige might have helped it overcome some of the obstacles that are in its path today.[2]

The provisions in the Italian Constitution can be divided into two categories: those primarily of an institutional nature, which either establish or authorize the establishment of the principal organs of government and describe their functions and inter-relations, and those that state the rights and privileges of Italian citizens and the obligations and aims of the government. The first type is found in Part II of the Constitution (Arts. 55–139). The second type is found in the section of the Constitution called "General Principles" (Arts. 1–12) and in Part I (Arts. 13–54).

Still another classification of constitutional norms must be borne in mind in examining the implementation of the Constitution. Jurists distinguish between preceptive norms (*norme precettive*) and programmatic norms (*norme programmatiche*). Preceptive norms are those that are immediately applicable. Programmatic norms are those that require implementation by enabling legislation. Some of the preceptive norms in the Italian Constitution, however, are not effective today and some of the programmatic norms are effective regardless of parliamentary inactivity. Such preceptive norms as those found in the freedom of speech article (21), for instance, are not implemented because Parliament has not repealed certain Fascist legislation still in effect, and the Constitutional Court, which could declare those laws unconstitutional, has not been established. On the other hand, programmatic norms such as those authorizing already existing institutions are effective without further parliamentary action.

The organizational section of the Constitution in the main reestablishes the institutions of the former octroi constitution that Carlo Alberto of Savoy gave his people in 1848 and that became effective throughout Italy as the House of Savoy extended its domain, but it grafts onto this structure a number of institutions and procedures taken from modern democratic theory and practice. The Albertine Constitution, known as the *Statuto*, was a vague document that could be altered by ordinary legislation. Without being formally abrogated or amended, it underwent drastic changes in 1866 when parliamentary government was established, and again after 1926 when the Fascists began legalizing their anti-democratic activities. Although not in itself tyrannical, it offered little protection against tyranny.

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[2] Piero Calamandrei, "Cenni introduttivi sulla Costituente e sui suoi lavori," in Calamandrei-Levi, *op. cit.*, Vol. 1, pp. lxxxix–cxl.

The section provides for five important institutional changes: (1) the abolition of the monarchy and the establishment of a parliamentary republic (Arts. 83–91); (2) the transformation of the Senate from an appointive to an elective body (Arts. 57–60); (3) the establishment of the Constitutional Court (Arts. 134–137); (4) the establishment of regional governments (Arts. 114–133); and (5) the creation of the Superior Council of the Judiciary (Arts. 104–107). None of these changes can be considered revolutionary. Each is in keeping with modern trends and in line with the experience of other western democracies. The President's powers and functions are similar to those of the French President; the Senate is modeled after the Senate of the Third French Republic; the influence of the United States is seen in the Constitutional Court; the example of democratic Switzerland, as well as the doctrine of self-determination, is behind the establishment of regional governments; and the creation of the Superior Council of the Judiciary has the support of a cardinal democratic principle, that of the separation of powers.

Other changes in Part II of the Constitution are equally unrevolutionary and include (1) provision for initiative and referendum (Arts. 71, 75); (2) the new amending provisions, designed to give the Constitution greater rigidity and prevent its being altered by a process indistinguishable from ordinary legislation (Arts. 138–139); (3) the creation of an advisory council on economic and labor problems (Arts. 99–100); (4) the institution of a mild type of presidential veto (Art. 74); and (5) a series of provisions aimed at strengthening the government *vis-à-vis* Parliament (Arts. 92, 94).

Of these changes, six are primarily of a programmatic nature, and four, the abolition of the monarchy, the amending process,[3] the presidential veto, and the provisions aimed at strengthening the government *vis-à-vis* Parliament,[4] are preceptive and therefore in force without need of implementation. Of the six which require implementation only two have been implemented, and the second of these only in part. In both instances enabling legislation was passed by the Constitutional Assembly in the interim period between the promulgation of the Constitution and the election of the first Parliament in April, 1948.

Transitory Article XVII of the Constitution empowered the Constitutional Assembly to pass laws implementing three specific constitutional provisions: the Senate electoral law, the charters for the special regions, and the law on the press.[5] The Constitutional Assembly carried out these instructions.

The election laws have followed the Constitution in most respects. They have established universal adult suffrage (for the Chamber of Deputies) and have guaranteed the secrecy of the vote (Article 48), but the constitutionality of making voting compulsory and recording failure to vote in the *Certificato di buona condotta* is questioned by at least one authority.[6]

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[3] Except insofar as the provision for the referendum is not implemented.

[4] For a discussion of these provisions, see Mario Einaudi, "The Constitution of the Italian Republic," AMERICAN POLITICAL SCIENCE REVIEW, Vol. 42, pp. 661–76 (Aug., 1948).

[5] Discussed *infra*.

The Constitutional Assembly enacted enabling legislation, in this case charters, for three of the five special regions (Sardinia, Aosta, Trentino-Alto Adige) and approved the previously granted charter of Sicily. Although all of these charters differ, and the three written by the Constitutional Assembly give less autonomy to the regions than the Sicilian charter did, their provisions raise no constitutional problems, as the Constitution simply states that these regions are to enjoy a special status as set forth in their charters (Art. 116). The Constitutional Assembly was also justified in not issuing a charter for Friuli-Venezia Giulia, as Transitory Article X of the Constitution states that this region will be treated "provisionally " (i.e., until Italy regains Trieste) as an ordinary region.

## II

The efforts of Parliament to implement the Constitution have been neither strenuous nor effective. Most of the members of the Constitutional Assembly were elected to Italy's first Parliament in April, 1948. This fact led one to expect that Parliament would hasten to enact enabling legislation to make operative the Constitution its own members had written. Such, however, was not the case. The change can be explained in part by the waning idealism and democratic fervor noticeable in Italy by 1948 and in part by the increase in Catholic and reactionary strength at the expense of the minor democratic parties. In the 1948 elections the Communists about held their own with respect to their power in the Constitutional Assembly, but the Liberals, the Republicans and the right-wing Socialists lost heavily. The Christian Democrats, under the leadership of Alcide De Gasperi, won an absolute majority in the Chamber of Deputies and a plurality in the Senate. This was the party that had the largest number of deputies in the Constitutional Assembly and therefore had the major voice in writing the Constitution. Nevertheless, though it has a fine record of achievement in many respects, the De Gasperi government, in its four and a half years' existence, has failed to implement many significant features of the Constitution.

Much of the important enabling legislation would have the effect of reducing the powers and freedom of Parliament. This is true with respect to the five principal institutions which have not as yet been activated: the Constitutional Court, the regions, the Superior Council of the Judiciary, the initiative and referendum, and the National Council of Economics and Labor. Perhaps it is too much to expect mere human beings to be so profligate with their powers as to vote them away, and perhaps one can accuse the Constitutional Assembly of naïveté for assuming otherwise.

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[6] *Testo unico*, February 5, 1948, No. 26; Carlo Lavagna, "Atti e eventi costituzionali in Italia dal 1 gennaio 1948 al 31 dicembre 1950," *Rivista trimestrale di diritto pubblico*, Vol. 1, pp. 180–84 (1951). In June, 1952, the government proposed a new electoral law abolishing proportional representation and guaranteeing a majority of seats to the coalition that receives the plurality of votes. Such a law may be unconstitutional on the grounds that it deprives citizens of an equal vote.

The fulcrum of Italy's constitutional system is the Constitutional Court. Without this institution the Constitution cannot function effectively. In spite of this fact, Parliament has taken no final action for the establishment of the Court. A bill was presented in the Senate by the government on July 14, 1948, and passed on March 17, 1949. This bill was presented to the Chamber on April 2, 1949. Over a year later, on April 17, 1950, it came out of committee, considerably altered, and was approved March 15, 1951. After this it returned to the Senate, where a committee drew up a compromise bill for re-submission to the Chamber. Another measure in the form of a constitutional amendment supplementing the brief and inadequate provisions passed by the Constitutional Assembly (February 9, 1948) was presented in the Chamber May 20, 1950, and passed the first time March 16, 1951.[7]

Parliament has not set up the ordinary regions.[8] Although a bill to this effect, marked "urgent," was presented to the Chamber by the government December 10, 1948, no action has been taken.[9] This failure on the part of Parliament has led to special difficulties. Since the Constitution specifically delegates to the regions powers over many local matters, Parliament tends not to legislate on those matters pending the creation of regions,[10] or if it does legislate, its acts may be of questionable constitutionality.[11]

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[7] This bill passed the Chamber for the second time on July 3, 1952 (two votes at least three months apart are required for constitutional amendments) and will now go to the Senate. This amendment deals primarily with procedural questions. It defines, for instance, the manner in which impeachment proceedings can be brought before the court. Such action will require the vote of a joint session of Parliament.

There is an extensive bibliography on the Constitutional Court. See Piero Calamandrei, *La illegittimità costituzionale delle leggi del processo civile* (Florence, 1950); Eduardo Garbagnati, "Sull'efficacia delle decisioni della Corte Costitutionale," in *Studi in onore di Francesco Carnelutti*, Vol. 4 (Padua, 1950), pp. 191–213; Michele Petrucci, "La corte costituzionale," in Calamandrei-Levi, *op. cit.*, Vol. 2, pp. 431–64; Alfonso Tesauro, "Relazione sul progetto di legge per la Corte costituzionale," *Atti parlamentari*, Camera dei Deputati, No. 469A, pp. 1–42 (1950); Ernesto Bruneri, *La corte costituzionale* (Florence, 1952); Carlo Lavagna, *op. cit.*, pp. 170–95, 429–52.

[8] For the powers and functions of the region, see Giovanni Miele, "La regione," in Calamandrei-Levi, *op. cit.*, Vol. 2, pp. 225–379.

[9] One author has suggested that in failing to implement this part of the Constitution the senators and deputies may be guilty of violating two articles of the Constitution itself: Article 54, which reads, "All citizens have the duty of remaining faithful to the Republic and to observe the Constitution and the laws," and Transitory Article VIII, which specifically directs Parliament to establish the regions and hold regional and provincial elections within a year of the promulgation of the Constitution. (Alberto Predieri, "Due anni di esperienza costituzionale," *Belfagor*, Vol. 5, pp. 80–88, at 81–82 (1950).) The provincial elections, which according to the Constitution should have been held in 1948, were held in 1951 and 1952.

[10] Massimo Severio Giannini, in some remarks made before the *Congresso dei giuristi democratici* in Rome on June 2, 1952.

[11] Predieri, *op. cit.*, p. 88. Hundreds of bills for the creation of new communes, for instance, have been presented, some of which have been acted on favorably.

Parliament cannot be held entirely responsible for the inaction and delay with respect to the creation of the Superior Council of the Judiciary, as in this case the government has not even presented an enabling bill. Any deputy or senator could, of course, have presented the bill regardless of governmental inactivity, but such initiative beyond the call of duty is hardly to be expected. In a speech before the Senate on April 23, 1952, the Minister of Justice, Adone Zoli, promised to present a bill for the establishment of the Council before the summer recess of Parliament.[12]

The provisions for initiative and referendum are still inoperative for lack of enabling legislation. A bill presented by the government and passed by the Chamber March 8, 1951, was altered by the Senate and returned to the Chamber January 1, 1952. The committee of the Chamber accepted all of the Senate's changes with respect to the constitutional referendum and the initiative, but it recommended minor variations in the articles dealing with the legislative referendum.[13]

Enabling legislation for the National Council of Economics and Labor was presented in the Senate March 15, 1949, where it passed December 6, 1951, but by July 1, 1952, no action had been taken by the Chamber. This delay has been due in part to differences of opinion on some of the technical questions involved, such as whether or not there should be special sections for economic and labor problems, the number of councilors, and the percentage of technical experts to be included.[14] It is interesting to note that the inclusion of this Council in the

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[12] *La nuova stampa,* Turin, Vol. 8, No. 98, April 24, 1952. The function of this body is to protect the judiciary from undue influence by other branches of the government. According to the Constitution, the Council is to be presided over by the President of the Republic, and the Chief Justice and the Chief Prosecutor of the Court of Cassation are members *ex officio.* Two-thirds of the other members are elected by the judges from their own ranks, and the other third by Parliament in joint session, from among law professors and lawyers with at least 15 years' practice. Among the functions of the Council are the selection and promotion of magistrates.

A similar innovation was adopted by the French in the Constitution of the Fourth Republic. The Italian Constitution provides for a substantially independent Council, in that the majority of its members are career judges elected by career judges. The majority of the members of the French Council, however, represent the non-judicial branches of the government. (See Carlo Giannattasio, "La magistratura," in Calamandrei-Levi, *op. cit.,* Vol. 2, pp. 169–97, at 179.)

[13] According to the Constitution (Art. 125), the referendum is not to be admitted in the case of tax bills, amnesties, or authorizations of treaty ratifications. These limitations pose a serious problem, as it will not always be clear whether or not a law for which a referendum is requested falls within the subject matter for which the Constitution permits a referendum. The Constitution is silent as to what government agency is empowered to decide this question. It is proposed to give it to the Constitutional Court by a constitutional amendment. On the specific question, see Roberto Lucifredi, "Il controllo sulla costituzionalità delle richieste di referendum abrogativo," *Rivista trimestrale di diritto pubblico,* Vol. 1, pp. 128–37 (1951). On the referendum in general see Maurice Battelli, "Le instituzioni di democrazia diretta," in Calamandrei-Levi, *op. cit.,* Vol. 2, pp. 61–78.

[14] Lavagna, *op. cit.,* pp. 189–92.

Constitution was primarily the work of Christian Democrat leaders, particularly Professor Costantino Mortati and Edoardo Clerici.[15]

The Constitution further directs (Arts. 25, 102, 103, and Temporary Art. VI) that within a year of its promulgation the courts martial be reorganized in accordance with the Constitution, and that within five years all other special courts but two (the *Consiglio di stato* and the *Corte dei conti*) be abolished. In spite of this directive, no final action has been taken with respect to the reorganization of the military courts, although a bill was presented in the Chamber of Deputies December 18, 1948, just under the legal deadline and just before the Christmas recess. Parliament had until January 1, 1953, to enact legislation absorbing the other special courts into the regular judicial system. The major courts involved are tax courts and admiralty courts. It has been pointed out that there are no political considerations to explain and partially excuse parliamentary inaction in this matter.[16]

A bill was presented in the Chamber June 6, 1952, to regulate the powers of the Council of Ministers and its President. This bill attempts to implement and clarify Articles 76, 77, and paragraph 5 of Article 87 on executive orders, and would give the President of the Council the power of determining the agenda for the cabinet meetings.[17]

By way of summary, it can be said that the following provisions of Part II of the Constitution are inoperative because of Parliament's failure to act: parliamentary incompatibilities (Art. 65), initiative (Art. 71), referendum (Art. 75), National Council of Economics and Labor (Art. 99), Supreme Council of the Judiciary (Arts. 104–106), regions (Arts. 115, 117–133), and Constitutional Court (Arts. 134–137). This is a total of 29 out of the 84 articles in Part II of the Constitution. Virtually all of the effective articles were operative without parliamentary intervention, either because they contain preceptive norms, which require no enabling legislation, or because the enabling legislation had been passed by previous legislatures. It should in fairness be remembered, however, that the government has presented enabling legislation for the implementation of almost all of the presently inapplicable provisions in this section of the Constitution. There is no sign of a conscious effort on the part of the government to prevent the application of this section; rather there has been a lack of that positive concern necessary to overcome parliamentary inertia. With respect, however, to the section of the Constitution dealing with civil liberties and the ends of the state, the government has not shown even this limited initiative.

The "General Principles" and Part I of the Constitution can be considered together. This section attempts to state the limitations and obligations of government *vis-à-vis* the people. It comprises an extensive bill of rights that adds to the classical limitations on government common to all democratic constitutions, a series of positive obligations the government is supposed to perform in the interests of the individual citizen, such as free medical care for the poor (Art. 32), free education for the deserving poor (Art. 34), and vocational training (Art. 35). Unfortunately, these are obligations that the state is unable to fulfill, either at present or in the foreseeable future. Some theorists feel that these statements of principle, which are in fact little more than pious hopes, belong in a preamble and not in the corpus of a Constitution.[18] Others feel that since they represent the ends to which the state created by the present Constitution aspires, they belong in the corpus, where they will have a normative value in the sense that they will (1) invalidate any action directly contrary to their provisions, (2) serve for the interpretation and application of other norms, and (3) create a moral obligation on the part of Parliament to implement them.[19]

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[15] Alberto Bertolino, "L'attività economica, funzioni e forme organizzative del lavoro. Il consiglio nazionale dell'economia e del lavoro," in Calamandrei-Levi, *op. cit.*, Vol. 1, pp. 407–40, at 440.

[16] Predieri, *op. cit.*, p. 83.

[17] On the general subject of the President of the Council of Ministers, see Alberto Predieri, *Lineamenti della posizione costituzionale del presidente del consiglio* (Florence, 1951).

The application of any of the norms in this section is handicapped by the fact that they are often mutually contradictory, the result of compromises approved by different political coalitions. An example is seen in the provisions dealing with illegitimate children. Article 3 reads in part:

> All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, and personal or social status.

Article 30 reads:

> The law assures to children born out of wedlock all legal and social protection compatible with the rights of the members of the legitimate family.

These provisions do not seem reconcilable with respect to the rights of illegitimate children.

Other serious problems of incompatibilities result from the inclusion of the Lateran Pacts in the Constitution (Art. 7). This article reads:

> The state and the Catholic Church are independent and sovereign in their own spheres. Their relations are regulated by the Lateran Pacts. Modifications of the Pacts accepted by the two parties do not require the procedure for constitutional amendment.

Included in the Lateran Pacts are several provisions obnoxious to Western democratic concepts of civil liberties found in the Italian Constitution. Such a provision, for example, is the one that a former priest cannot be employed by the government in a position that puts him in contact with the public—obviously in contrast with the "equal protection" provision of Article 3 of the Constitution.

The incompatibilities between the Constitution and the Pacts, however, extend beyond the question of civil liberties and result in at least one instance in an outright absurdity, i.e., Article 26 of the Lateran Treaty (one of the Lateran Pacts), which states:

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[18] See, for example, a speech by Piero Calamandrei in *Atti dell'Assemblea costituente,* Vol. 49, pp. 1743–55 (Mar. 4, 1947).

[19] Paolo Barile, *La costituzione come norma giuridica* (Florence, 1951), pp. 44–58.

> The Holy See recognizes the Kingdom of Italy under the dynasty of the House of Savoy.

The dilemma raised by these incompatibilities is resolved by the majority of the authorities by giving preference in cases of conflict to the constitutional provision on the grounds that Article 7 of the Constitution merely establishes that the Lateran Pacts determine the basic relations between Italy and the Vatican, and that specific provisions in the Pacts patently at variance with other articles of the Constitution are ineffective.[20]

The case for this opinion is greatly strengthened by an examination of the proceedings of the Constitutional Assembly. Amerigo Crispo, one of the Liberal deputies, offered an amendment to Article 7 inserting after the words "Lateran Pacts" the clause "insofar as they are not contrary to the present Constitution,"[21] but withdrew it on the assurance of responsible Demochristian deputies that "the sole legal significance of this article" was to establish the fact that "of the various possible systems for regulating the relations between state and church, Italy adopts the one that distinguishes between the two powers and coordinates their relations through a bilateral pact, and provides that unilateral changes in this relationship can be made only by constitutional amendment."[22] On the strength of this interpretation the Republican Count Sforza voted for Article 7.[23] Also worthy of note is the fact that an amendment by the neo-Fascist Gennaro Patricolo explicitly inserting all the provisions of the Pacts in the Constitution was voted down with the help of the Christian Democrats.[24]

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[20] Paolo Barile, "Religione cattolica, religione dello stato, religione privilegiata (a proposito della vigenza dell'art. 402 c.p.)," *Diritto ecclesiastico,* Vol. 52 (1951); Paolo Barile, "Regime costituzionale e disciplina concordatoria in tema di educazione di prole," *Il foro padano,* Vol. 4, Sec. 4, pp. 168–74 (July–Aug., 1949); Marino Bon di Valsassina, "La Repubblica italiana è uno stato confessionista?," *Rassegna di diritto pubblico,* Part 1, pp. 50 ff. (1952); Balladore Pallieri, *op. cit.;* Bertola, "L'état, l'église catholique et les autres confessions religieuses," in Crosa (ed.), *La constitution italienne,* pp. 215 ff.; Bertola, "Constituzionalizzazione dei patti lateranensi?," *Giurisprudenza italiana,* Vol. 102, Sec. 4, pp. 172 ff. (1950); Costantino Mortati, "L'évolution constitutionelle italienne," in Crosa (ed.), *La constitution italienne,* pp. 40 ff.; Virga, *op. cit.,* p. 394; Checchini, "Stato e chiesa dallo statuto albertino alla costituzione repubblicana," *Nel centenario del 1848* (Padua, 1949), pp. 119 ff.; Del Giudice, *Manuale di diritto ecclesiastico,* 7th ed. (Milan, 1949), pp. 93 ff.; Guido Calogero, "La scuola, la scienza e le arti," in Calamandrei-Levi, *op. cit.,* Vol. 1, pp. 315–24; Cesare Grassetti, "I principi costituzionali relativi al diritto familiare," in Calamandrei-Levi, *op. cit.,* Vol. 1, pp. 296–300; Luigi Bianchi D'Espinosa in Baschieri, Bianchi D'Espinosa, Giannattasio, *op. cit.,* p. 32. The opposite view is held by the following authors: Amorth, *op. cit.,* pp. 52–53; Pietro Agostino D'Avack, "I rapporti fra stato e chiesa," in Calamandrei-Levi, *op. cit.,* Vol. 1, pp. 107–16; Vezio Crisafulli, "Articolo 7 della costituzione e 'vilipendio della religione dello Stato'," *Archivio penale,* pp. 416–17 (1950); Arturo Carlo Jemolo, "Religione dello stato ed articoli 402–404 c.p.," *La giustizia penale,* Vol. 54, Sec. 2, pp. 203 ff. (1949); Arturo Carlo Jemolo, *Chiesa e stato in Italia negli ultimi cento anni* (Turin, 1949), pp. 702–14.

[21] *Verbale dell'Assemblea costituente,* No. 60, p. 2038, and No. 75, p. 2438.

[22] *Ibid.,* No. 70, p. 2327 (the words are those of Giuseppe Dossetti). See also No. 62, p. 2113 (Count Stefano Iacini) and No. 70, p. 2319 (Dossetti).

[23] *Ibid.,* No. 75, p. 2470.

In spite of the preponderance of authority for this interpretation of the effectiveness of the Lateran Pacts as constitutional norms, the fact remains that their inclusion in the Constitution has increased the doubt and confusion in the minds of many as to the applicability of those parts of the Constitution which are in conflict with provisions in the Pacts.

The implementation of the programmatic norms in Part I of the Constitution might have been made easier if Parliament had established a Constitutional Court, as then the Court could have weeded out the patently unconstitutional articles in Italy's basic codes and laws. Faced by the necessity of filling the vacua left by these judicial nullifications, Parliament might have been forced to revise these laws without delay. The fact that Parliament has not established the Constitutional Court, however, has not relieved it of the responsibility of implementing Part I directly. Transitory Article XVI of the Constitution reads:

> Within a year of the effective date of the Constitution, the pre-existing constitutional laws not implicitly or explicitly abrogated will be revised and coordinated [with the Constitution].

The failure of Parliament to implement Part I of the Constitution does not mean that many of its provisions—the so-called preceptive norms—cannot be applied by the administration and the courts. The administration, however, has shown less interest in the Constitution than the legislature. It would appear that the courts have taken the new Constitution more seriously than the other branches of the government. That the legal profession should respect the law more than politicians and administrators is natural. But with Parliament's failure to enact enabling legislation for the Constitutional Court, and with the non-existence of the principle of *stare decisis*, the regular courts have been powerless to create an adequate and coherent jurisprudence. Many of the major inefficiencies will be alleviated and some will be eliminated with the establishment of the Constitutional Court, but the effectiveness of this court will depend in large measure on the quality of the enabling legislation.[25]

A few provisions in this part of the Constitution were implemented by the Constitutional Assembly. Article 21 was partially implemented by the law on the press, which abrogated the law of January 14, 1944, requiring authorization by the prefect before publication. The new law[26] only requires notification. It retains the Fascist provision, however, that every periodical must have an editor who is criminally responsible for everything that appears in the periodical. In 1952 Parliament was considering the repeal of this article, which some think is incompatible with Article 27 of the Constitution, which reads in part: "Criminal responsibility is personal."

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[24] *Ibid.*, No. 75, pp. 2444, 2483.

[25] The Constitution (Art. 36), for example, states that an act which the Constitutional Court declares unconstitutional will become ineffective the day after the publication of the sentence. Parliament should clarify this provision. If it means that the party to a dispute who claims that the Constitution has been violated can get no redress for his personal grievance, but only the altruistic satisfaction of having helped others, only those persons who can expect to be handicapped in the future by a law or regulation are likely to go to the trouble and the expense of testing its validity. (See Alfonso Tesauro, *op. cit.*, pp. 37–38; Michele Petrucci, *op. cit.*, pp. 456–59; Piero Calamandrei, *La illegittimità costituzionale*).

The charters of Aosta (Chapter VI) and Trentino-Alto Adige (Chaper X) guarantee protection to linguistic minorities, and in this way they in part implement Article 6 of the Constitution, which reads: "The Republic protects linguistic minorities by appropriate legislation." A bill to this effect presented to the Chamber December 10, 1948, is still pending.

On June 19, 1952, Parliament passed a bill implementing Transitory Article VII, outlawing the reorganization of the Fascist party. With its approval of the treaty creating the Council of Europe, the Italian Parliament expressed an opinion in accordance with Article 11 of the Constitution, which gives Parliament the right to delegate sovereignty to an international organization.

Although no action has been taken for the thorough revision of the Criminal Code, the Code of Criminal Procedure and the law on Public Security, a number of bills have been presented to abrogate or to revise specific articles of these laws. For example, a bill to abrogate Article 16 of the Code of Criminal Procedure passed the Senate and was presented before the Chamber June 19, 1952. This article provides that no criminal action can be initiated against public officials or members of the armed services for actions performed with the use of arms or other physical coercion, in line of duty, without the consent of the Minister of Justice. Another bill was presented January 25, 1949, marked "urgent," that would annul all the sentences of the Fascist political tribunal (*Tribunale speciale per la difesa dello stato*). After three and a half years it is still in committee. Two bills were presented to implement Article 30, paragraph 3, which protects illegitimate children. One bill, presented March 15, 1951, by the Christian Democratic deputy Maria Pia Del Canton, would eliminate all mention of the parents' names in government certificates. The other, presented by the Socialist Bianca Bianchi, authorizes public officials to invent names for children whose parents' names are unknown. Since in Italy one has to present documents that among other things include the parents' names, from the first appearance in grade school on through the rest of one's life, this is a matter of some importance.[27]

A bill implementing Article 16, paragraph 2, was approved by the Senate on March 27, 1952, and approved with only minor changes by a committee of the Chamber June 17, 1952. This bill regulates the issuance of passports. Previously passports could be denied by the government for any motive and without explanation. The bill before Parliament implements the Constitution in that it grants a general right to a passport to all citizens who do not fall within one of eight groups. Included in these groups are persons who have not performed their military service, condemned persons who have not served their sentences or paid their fines, minors, idiots, and workers who want to seek work abroad and who are not acceptable under the immigration laws. This bill would also implement Article 30 in part, as the parents' names would not be included in the passports. From a constitutional point of view the most questionable article in this bill is article 8, which permits the Minister of Foreign Affairs to refuse to issue or to revoke a passport when it "appears prejudicial to the internal or international security of the state." The intention of this article is apparently to permit the government to continue its practice of refusing or revoking passports of Communists who speak against the government when abroad. Although it is difficult to demonstrate the unconstitutionality of article 8 as it stands, it is unfortunately liable to uses and interpretations that violate the spirit of the Constitution.

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[26] Law of February 8, 1948, No. 47.

[27] The Bianchi bill passed in the Chamber July 17, 1952.

With the abolition of the corporate system, there has been a large void in Italian law in the labor field, a void all the more felt because of the copious legislation and control in this field under Fascism. The Constitution speaks of "registered" unions, of collective agreements, and of the right to strike (Arts. 39–40). Three successive Ministers of Labor (Fanfani, Marazza, Rubinacci) prepared legislation in this matter, but only the last actually presented his project to Parliament. This bill has been strongly criticized, particularly in labor circles, and many of its provisions are of questionable constitutionality. Informed persons feel it unlikely that Parliament will accept it.

Parliament has not only failed to implement major sections of the Constitution, but in several instances it has also enacted legislation that appears to violate the letter or the spirit of the Constitution. The new law against Fascism, for instance, provides for punishment of public expression of praise for Fascist principles, deeds, means, or leaders (Art. 4). This seems to be in open conflict with the freedom of speech article (21). A bill authorizing pre-censorship of comic books appears equally incompatible with the Constitution's freedom of speech article. This bill had strong Catholic support in Parliament and was fought by the Liberals, Republicans, right wing Socialists and some of Italy's more responsible newspapers, such as *La stampa* of Turin and *Il corriere della sera* of Milan. It passed the Chamber without serious difficulty in the spring of 1952, but by July 1 no action had been taken by the Senate. A new bill on the freedom of the press is also under discussion. It is severely attacked by the liberal press for its illiberal and allegedly unconstitutional restrictions.[28]

The land reform law, one of the few pieces of truly "liberal" legislation that Parliament has enacted in the postwar period, also appears to be unconstitutional. It empowers administrative officials to expropriate land, and classifies this action of the administrators as legislative and therefore not subject to review by the administrative courts. Italy's highest administrative court has denied the legislative nature of these acts, declared its competence to review them, and annulled them as *ultra vires*, although the acts were admittedly valid under the law.[29]

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[28] See Mario Ferrara, "La legge sulla stampa," *Il nuovo corriere della sera*, Vol. 77, No. 155 (July 2, 1952); Mario Ferrara, "Ancora sulla stampa," *Il nuovo corriere della sera*, Vol. 77, No. 156 (July 3, 1952); and Emilio Crosa, "Le insidie d'un progetto," *La nuova stampa*, Vol. 8, No. 157 (July 4, 1952).

Parliament avoided a constitutional question over an alleged conflict of authority between Parliament and the Regional Council for Trentino-Alto Adige. Both bodies claimed the power to write the law for the election of local government officials in the province of Bolzano. The Regional Council, basing its authority on some equivocal provisions in the regional charter (Arts. 4, 5, 54), passed a local election law in December, 1949. The legality of this law was questioned by the Commissioner for the region (the representative of the Italian government, with powers similar to those of the prefect in other regions). On recourse to the *Consiglio di stato*, the supreme tribunal for administrative adjudication, the view of the Commissioner was upheld. Thereupon the De Gasperi government presented a detailed election bill for the region of Trentino-Alto Adige to the Senate. This body, in a conciliatory mood, passed a sort of skeleton bill, delegating to the regional parliament the authority to fill in the details. This bill was later passed by the Chamber of Deputies as well. This appears to be the first time that Parliament has been called upon to judge the constitutionality of an act, and the legislators avoided the constitutional issues involved by enacting compromise legislation.[30]

## III

The President[31] is concerned with the Constitution in at least two ways. His oath of office requires him to observe the Constitution (Art. 91), thus giving him a degree of control over the constitutionality of the acts of other branches of the government that he must sign. He is also required to participate in governmental activities, and by his participation he delimits his own constitutional powers, a point on which the Constitution is not clear. Like many chiefs of state today, the Italian President is legally irresponsible, except for treason or violation of the Constitution (*attentato alla costituzione*) (Art. 90), and all his acts must be countersigned by the proposing Minister (Art. 89). It is simple enough to follow the Constitution on this point in those cases in which the President's action was proposed by a Minister, but it is hard to decide who must countersign the many discretionary acts the President performs, such as the appointment of the President of the Council of Ministers, the dissolution of Parliament, and the nomination of the five life senators and five of the judges of the Constitutional Court. It seems to be agreed that even these acts must be countersigned,[32] but there is a difference of opinion as to whether they are to be taken on the President's initiative or whether he should formally appoint the persons actually chosen by the government. The latter view, incorporated in the Fumagalli amendment to the bill on the Constitutional Court, appears to express the Christian Democrat position on the question.[33] Those who support the President's right to initiative are divided as to whether the Minister who countersigns the nomination has control over the President's discretionary powers or merely over the legality of his acts. The commentators seem to favor the second view.[34]

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[29] Decision of *Consiglio di stato* March 20, 1952, reported in *Il foro padano*, Vol. 7, Sec. 4, p. 33 (1952). The government has appealed this decision to the Court of Cassation.

[30] *Atti parlamentari*, Camera dei Deputati, Vol. 855, pp. 35564–35579 (February 13, 1952). This problem was avoided in the case of Sardinia when the Sardinian Regional Legislature authorized the temporary use of the national election law (Sardinian Regional Law of August 10, 1951, No. 12).

[31] The constitutional position of the President of Italy is somewhat obscure. Many authorities believe he is not part of the executive branch of the government, which is headed by the President of the Council of Ministers, and place him outside of all three conventional branches. (See Aldo M. Sandulli, "Il presidente della Repubblica e la funzione amministrativa," in *Studi in onore di Francesco Carnelutti*, Vol. 4 (Padua, 1950), pp. 215–42; Giuseppe Guarino, "Il presidente della Repubblica italiana," *Revista trimestrale di diritto pubblico*, Vol. 1, pp. 903–92 (Oct.–Dec., 1951); Teodosio Marchi, "Il capo dello stato," in Calamandrei-Levi, *op. cit.*, Vol. 2, pp. 105–24; Emilio Crosa, "Gli organi costituzionali e il presidente della Repubblica nella costituzione italiana," *Rivista trimestrale di diritto pubblico*, Vol. 1, pp. 91–113 (Jan.–Mar., 1951); Meuccio Ruini, "La controfirma ministeriale degli atti del capo dello stato," *Il foro padano*, Vol. 7, Sec. 4, pp. 18–32 (1952).

In order to support the opposite thesis the Christian Democrat leaders have suggested that the President does not have to accept the government's nominees. Were this view accepted, the President's veto power might be extended by analogy to any governmental action requiring his signature, such as ratification of treaties, declaration of war, dissolution of Parliament, or calling of referenda.[35] It is doubtful if the Constitutional Assembly intended to give the President such sweeping power.

The Constitution gives the President a limited veto power. Instead of signing a bill he may send it back to Parliament for reconsideration, at the same time giving his reasons for not signing it (Art. 74). This so-called "suspensive veto" can be overridden by simple majorities of both houses of Parliament. The suspensive veto may be used for bills that the President feels are merely inexpedient as well as for those that he may consider unconstitutional. During his first four years of office President Einaudi used his limited veto power only twice, in the case of bills that were patently unconstitutional. On April 15, 1949, President Einaudi returned two bills to Parliament that were in violation of Article 81 of the Constitution, which prescribes that "every law which calls for new and greater expenditures must indicate the revenue from which they will be met." Again, on January 11, 1950, the President returned to Parliament for further consideration a bill that would give tenure in the judicial system to certain temporary appointees. This bill appeared to the President to be in contrast with Article 106 of the Constitution, which states that members of the judiciary are to be chosen by competitive examination. On reconsideration this bill was modified by Parliament.[36]

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[32] Ruini, *op. cit.;* Guarino, *op. cit.*, p. 985; Marchi, *op. cit.*, p. 119.

[33] *Atti parlamentari*, Camera dei Deputati, pp. 27232 ff. (1951).

[34] Ruini, *op. cit.;* Guarino, *op. cit.*, pp. 985, 988–89; Luigi Bianchi D'Espinosa, "Il parlamento," in Calamandrei-Levi, *op. cit.*, Vol. 2, pp. 1–60, at 23.

[35] Guarino, *op. cit.*, pp. 986–92.

The uncertainties in the constitutional relationships between the President and the other government organs can only partially be blamed on obscurities in the Constitution itself. The judicial status of a constitutional monarch or of a president in a parliamentary democracy is necessarily ambiguous in that it is based on antithetical concepts of sovereignty. On the one hand, there is the fiction of popular sovereignty, delegated by the electorate to the President of the Council of Ministers; on the other, there is the fiction of the sovereignty and the prerogative of the head of the state—king or president—who is not responsible to the people. The powers and prerogatives left to the head of the state in such illogical systems cannot be clearly delimited in a legal document. Their delimitation can result only from compromises sanctified by tradition.

## IV

It is impossible in a few pages to give a systematic account of the implementation, and violations, of the Constitution by the administration and the courts. The administration is obviously in no position to implement those parts of the Constitution that are inoperative for want of enabling legislation. Under ideal conditions, however, it might show a greater interest than it has so far shown in governing in accordance with the preceptive norms of the Constitution. No case has come to light where the administration, of its own accord, has formally determined not to apply patently unconstitutional laws, or where it has formally taken into consideration, in making future policy, court decisions declaring such laws unconstitutional. Informally, however, it appears that the police have been convinced that *confino* is no longer to be applied. *Confino* is a system by which the police could require anyone to move to an isolated and out-of-the-way place, where he remained indefinitely under strict police surveillance, without judicial trial and without the right of appeal to the courts.

Serious conflicts between the Constitution and the administration arise in the field of civil liberties. A comparison of the Criminal Code, the Code of Criminal Procedure, and the Fascist Law on Public Security with the civil liberties provisions of the Constitution shows the basic incompatibility of these laws and the Constitution. The courts have repeatedly declared certain articles of these laws unconstitutional, without much effect on the subsequent actions of the administration. The continued application of these laws is in part the result of the legislature's failure to rewrite them, but since a large portion of the administrative acts of questionable constitutional validity are discretionary rather than ministerial in nature, many instances of conflict with the Constitution could be avoided if the administration were persuaded that where discretion is involved, the law should be applied in the spirit of the Constitution. This sentiment, far from pervading the administration, has hardly made itself felt.

According to Transitory Article VII:

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[36] This information was obtained from the Office of the Secretary of the President of Italy.

> . . . pending the creation of the Constitutional Court the regular courts have the power to judge the constitutionality of laws and other public acts in the manner and in the limits of the law as it existed before the promulgation of the new Constitution.

This provision gives the regular courts limited powers with respect to the Constitution. They can do nothing to implement the programmatic norms, which are considered unenforceable on the grounds that they are merely directives to the legislature and are not in themselves legally binding.[37] They cannot directly implement the preceptive norms. By declaring laws unconstitutional that are incompatible with the preceptive norms, they can at least clear away some of the impedimenta to the observance of these norms.[38] Even this power, however, is seriously limited by the fact that the principle of *stare decisis* is not admitted in the Italian legal system and consequently the regular courts are not empowered to lay down general principles on the constitutionality of laws and on the interpretation of articles of the Constitution. When an Italian court within the regular judicial system declares a law unconstitutional, the decision applies only to the case before the court, and there is no assurance that other courts higher or lower (or the same court, for that matter) will follow the precedent.[39]

The result of this state of affairs is that the courts have pecked away at some of the patently unconstitutional provisions in the Codes and principal laws of Italy, preventing their application in single instances; but since on many questions there has been little consistency in the court decisions, there can be little assurance on the part of the public that a future violation of these provisions will be condoned. In other words, the citizen has no way of knowing what his rights and privileges actually are.

> The absolute lack of adjustment of the former criminal law to the democratic principles of the new Constitution, resulting in the coexistence of norms which are basically antithetical in inspiration and clearly incompatible in more than one instance, has brought about a crisis in the relations between the law and the citizen, with the result that the citizen's obligation to know the criminal law becomes increasingly difficult to fulfill.[40]

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[37] Barile, *La costituzione*, pp. 93–100. Decision, Court of Cassation, United Criminal Sections, March 5, 1949, reported in *Giurisprudenza italiana*, Vol. 101, Sec. 2, pp. 281–89 (1949).

[38] Barile, *La costituzione*, Paolo Barile and Alberto Predieri, "Efficacia abrogante delle norme della costituzione," in Calamandrei-Levi, *op. cit.*, Vol. 1, pp. 69–86; Piero Calamandrei, *La illegittimità costituzionale*; Gaetano Azzariti, *Problemi attuali di diritto costituzionale* (Milan, 1951).

[39] In decisions dated May 31, June 19, July 17, July 24, and July 27, 1950, various sections of the Tribunal of Rome held that Article 114 of the Law on Public Security, prepared by the Fascists, prohibiting the printing of photographs of persons who have committed a crime, was unconstitutional because it was in conflict with the guarantee of freedom of the press in Article 21 of the Constitution. On July 1, 1950, another section of the same tribunal convicted the editor of one of Rome's prominent newspapers of violating this article by printing a picture of a man accused but not convicted of a crime, in spite of the fact that Article 27 of the Constitution provides that "The accused is not considered guilty until he has been convicted (*sino alla condanna definitiva*)." (See *Giurisprudenza italiana*, Vol. 103, Sec. 2, pp. 52–60 (1951).)

[40] These are the words of an Italian judge, Massimo Severino, "Rimpatrio coattivo e costituzione," *Il foro padano*, Vol. 6, Sec. 4, pp. 103–7, at 103 (1950).

In Italy the judiciary is a career service. Young law students enter it by passing competitive examinations, and often remain in it for life. At first glance it may seem surprising that the young pretors eager for advancement in the service should be more zealous guardians of the Constitution and more ready to limit the powers and activities of the government than the judges of the Court of Cassation, who have reached the top rung of the judicial ladder. Nevertheless an examination of the reported cases[41] shows that the pretor has often been more diligent than his older and more august colleagues on the higher benches in enforcing the Constitution. This diligence may be due in part to the greater degree of idealism and naïveté considered inherent in the young, and in part to the fact that the humble pretor is likely to officiate in a hamlet, where happenings are of little concern to the government in Rome. The judges of the Court of Cassation, on the other hand, sit in Rome. They are older men, less interested in change *per se*, in constant contact with government leaders, and continually subject to their informal pressure.

The courts have been most consistent in implementing those sections of the Constitution which increase their powers. Thus there has been little disagreement over the enforcement of Articles 111 and 113 of the Constitution, which give the right of appeal to the Court of Cassation from the various administrative courts, or of Article 103, paragraph 3, which limits the competence of courts martial in peacetime to military crimes committed by members of the armed forces.

Much of the work of the courts on constitutional matters in this period has been over the application of laws which appear to be in open conflict with the civil liberties provisions of the Constitution. An examination of a few of the more important constitutional provisions in this field will suffice to show the general confusion that reigns in Italy today. Most of the cases reported have dealt with administrative actions based on Fascist legislation which the present Parliament has not yet modified or repealed and which is in sharp conflict with the basic civil liberties.

Religious freedom is guaranteed by Articles 3, 8, and 19 of the Constitution, which read in part, respectively:

> All citizens . . . are equal before the law without distinction . . . of religion. . . .
>
> Relations between the government and the various churches are regulated by agreements between them.
>
> Everyone has the right to profess his own religious faith . . . and perform its rites in private or public as long as the rites are not contrary to public morals.

In spite of these provisions, religious freedom appears to exist in Italy only in the larger centers. The police, at the instigation of local priests, regularly enforce patently unconstitutional provisions of the Fascist legislation forbidding religious activites of non-Roman Catholic groups, such as church services, ringing of bells, and proselytizing. In one instance the local authorities went so far as to forbid a man to have running water in his home on the grounds that he was a Holy Roller.[42]

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[41] There is no systematic reporting of the decisions of the Italian courts. Interesting cases, chosen somewhat at random, are written up and commented on in the various law reporters. The only exception is for the Court of Cassation. All of the points of law decided by this court are collected and published as maxims (*massimari*).

In three cases, at least, the courts have enforced the Constitution in protection of religious freedom. The right to hold religious services was upheld by the pretor of San Giorgio del Sannio.[43] In a decision of October 26, 1950, the Tribunal of Catania upheld the right to attempt to proselytize for any religious faith whose rites are not contrary to public morals.[44] The Court of Appeals of Bologna reversed a lower court decision in a separation case, which held that a father who read anti-clerical newspapers and used profanity was *ipso facto* an unfit guardian for his child.[45]

In general it can be said that the present Italian government has practically refused to reach agreements with the minority religious groups and to issue regulations in modification of the present provisions of the Criminal Code and of many other laws that appear clearly unconstitutional.[46]

Freedom of speech and of the press also have had a rocky road. These freedoms are protected in the Constitution in quite unequivocal terms: "Everyone has the right to express his opinion verbally or in writing" (Art. 21). There have been so many and such conflicting decisions on these matters that only a few of the decisions of the Court of Cassation can be mentioned here. In a decision of January 17, 1950, the Court of Cassation refused to apply Article 113 of the Law on Public Security requiring previous authorization for distributing circulars in public places, putting up wall posters, or using lights or loudspeakers as a means of communication, on the grounds that this law was incompatible with Article 21 of the Constitution.[47] This decision was confirmed with respect to putting up wall posters a week later.[48] Less than three months later, however, the Court of Cassation decided that Article 21 of the Constitution was programmatic and not preceptive and that Article 113 of the Law on Public Security was still effective.[49] Shortly after, the Court of Cassation decided that *giornali murali*, that is, newspapers printed solely to be posted in public places, are free from the obligations of Article 113 of the Law on Public Security, not because this article has been abrogated by Article 21 of the Constitution, but because of the provisions of Article 10 of the law on the press of February 8, 1948, No. 47.[50] Three months later, however, the same court decided that only *giornali murali*, and not ordinary newspapers, can be posted without the previous consent of the police.[51]

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[42] Giorgio Spini, "Le minoranze protestanti in Italia," *Il ponte*, Vol. 6, pp. 670–89 at 682 (June, 1950). See also a note by Giorgio Spini in *Il ponte*, Vol. 8, p. 844 (May–June, 1952); and Gaetano Salvemini, "I protestanti in Italia," *Il mondo*, Vol. 4, No. 32, pp. 3–4 (August 9, 1952).

[43] The Minister of the Interior in the Fascist era sent instructions to the prefects interpreting Article 650 of the Criminal Code so as to make it a crime for Holy Rollers to hold religious services. The instructions read: "The Pentecost cult is not admitted in the Kingdom because it expresses itself in rites that are contrary to social order and are harmful to the physical and psychic integrity of the race." Several years later, after the fall of Fascism and the promulgation of the new Constitution, at the instigation of a local priest the prefect decided to break up the Holy Rollers' meetings and so instructed the police. In his decision upholding the Holy Rollers' right to meet, the pretor observed (1) that the instructions were invalid because the Holy Rollers had not been advised of their content, (2) that the instructions were unconstitutional because they were incompatible with Article 19 of the Constitution, (3) that Article 18 of the Law on Public Security, requiring notification of public meetings, was abrogated with respect to religious services. The following extract from the pretor's decision is worthy of citation: "They abandon themselves to shouts, to sudden rough bodily contacts, and to the emission of incomprehensible words. Now, admitting that such incandescence and fanatical collective exuberance (not unknown to the greatest religious movements) may in certain instances and over a period of time upset the nervous equilibrium of the less balanced persons, it would still be absurd to hold that public morals are offended by these meetings . . . to such an extent as to justify their suppression." (Pretura of San Giorgio del Sannio, June 24, 1950, reported in *Giurisprudenza italiana*, Vol. 102, Sec. 2, pp. 310–16 [1950].)

[44] Reported in *Diritto ecclesiastico*, p. 150 (1951).

[45] Decision of April 13, 1950, reported in *Giurisprudenza italiana*, Vol. 102, Sec. 1, Part 2, pp. 241–48 (1950).

[46] Paolo Barile, "Appunti sulla condizione dei culti acattolici in Italia," *Diritto ecclesiastico*, p. 342 (1952). It is the opinion of two prominent Italian lawyers that under the present Codes it is a criminal offense in Italy to recite the Articles of Faith of the Church of England and the Protestant Episcopal Church, as such recitation would be a slander of the Pope and the Roman Catholic Church.

Article 16 of the Constitution reads:

> Every citizen may move about freely and settle in any part of the country, except for the limitations which the law may establish for motives of health and safety.

The Court of Cassation has come to the conclusion that this article does not deprive the police of the power to return any Italian to his place of residence if he lacks an identity card or is considered perilous to public order, public safety, or public morality. It should be borne in mind that the citizen has no legal redress against this police action.[52]

According to Article 17 of the Constitution, citizens have the right to assemble, and it is not necessary to have the previous consent of the public authorities even for meetings open to the public. In this case the Court of Cassation has decided that Article 18 of the Law on Public Security, requiring the consent of the police and notice to the police at least three days beforehand for meetings in public places or open to the public, is abrogated by the Constitution with respect to meetings open to the public.[53] Article 25 of the Constitution outlaws *ex post facto* laws. Italy's highest court, in a case involving persons accused of "Fascist crimes," perhaps overhastily decided that this provision was in itself not retroactive, and that it only applies to future legislation.[54]

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[47] Reported in *Giurisprudenza italiana*, Vol. 102, Sec. 2, p. 129 (1950), and in *Il foro padano*, Vol. 5, Sec. 4, p. 67 (1950), and *La giustizia penale*, Vol. 55, Sec. 2, p. 291 (1950).

[48] Court of Cassation, January 24, 1950, reported in *Il foro italiano*, Vol. 73, Sec. 2, p. 73 (1950).

[49] Court of Cassation, April 15, 1950, reported in *Il foro italiano*, Vol. 73, Sec. 2, p. 105 (1950), and *Il foro padano*, Vol. 5, Sec. 4, p. 121 (1950); Court of Cassation, October 12, 1950, reported in *La giustizia penale*, Vol. 56, Sec. 2, p. 14 (1951); Court of Cassation, January 11, 1951, reported in *La giustizia penale*, Vol. 56, Sec. 2, p. 640 (1951).

[50] Court of Cassation, October 16, 1950, reported in *Giurisprudenza italiana*, Vol. 103, Sec. 2, p. 287 (1951), also in *La giustizia penale*, Vol. 56, Sec. 2, p. 115 (1951).

[51] Court of Cassation, January 20, 1951, reported in *Giurisprudenza italiana*, Vol. 103, Sec. 2, p. 289 (1951), and in *La giustizia penale*, Vol. 57, Sec. 2, p. 11 (1952).

[52] Court of Cassation, December 9, 1950, reported in *Il foro padano*, Vol. 6, Sec. 4, p. 271 (1951), and in *La giustizia penale*, Vol. 56, Sec. 2, p. 99 (1951); Court of Cassation, June 19, 1950, reported in *La giustizia penale*, Vol. 55, Sec. 2, p. 971 (1950); Court of Cassation, April 28, 1951, reported in *La giustizia penale* (Vol. 56, Sec. 2, p. 922 (1951); Court of Cassation, January 20, 1951, reported in *Il foro padano*, Vol. 6, Sec. 4, pp. 175–84 (1951). See also Paolo Barile, "Costituzione e misure di sicurezza ristrettive della libertà personale," *Il foro padano*, Vol. 6, Sec. 4, pp. 175–82 (1951).

Articles 36 and 40 of the Constitution protect the workers' right to a living wage and to strike. According to Article 36 the worker has a right to remuneration proportioned to the quality and quantity of his work, and in any case sufficient to assure him and his family a free and decent life. This article has been applied in many instances for the purpose of nullifying provisions in individual labor contracts at variance with the minimum pay established in collective agreements.[55] In other instances the courts have considered the article programmatic and have refused to apply it.[56]

Article 40 of the Constitution reads in full: "The right to strike will be exercised in accordance with the laws that regulate it." Owing to parliamentary inactivity, no such laws have been enacted. The meaning of Article 40 seemed clear to the Naples Tribunal when it refused to hear a criminal case in which the defendants were accused of striking.[57] Five months later, however, the Tribunal of Cremona disagreed. In upholding the dismissal of striking workers, this court said, "The right to strike cannot be held to exist, since, according to Article 40 of the Constitution, it is dependent on the enactment of legislation that will distinguish between legal and illegal strikes."[58] The Court of Cassation later held that Article 40 of the Constitution is clearly preceptive, that striking is therefore a right, that *qui iure suo utitur neminem laedit*, and that the employer has no legal redress against strikers as such. The court went on to declare, however, that, pending legislative determination to the contrary, slowdowns or similar practices (*scioperi a scacchiera, a singhiozzo, e simili*) were not strikes and that employers were not restricted by Article 40 in the steps they could legally take against workers who participated in such practices.[59]

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[53] Court of Cassation, March 31, 1951, reported in *Il foro italiano*, Vol. 74, Sec. 2, p. 124 (1951), and in *Giurisprudenza italiana*, Vol. 103, Sec. 2, p. 281 (1951), and in *La giustizia penale*, Vol. 56, Sec. 2, p. 673 (1951).

[54] Court of Cassation, February 7, 1948, reported in *Il foro italiano*, Vol. 71, Sec. 2, p. 57 (1948), in *Giurisprudenza italiana*, Vol. 100, Sec. 2, p. 129 (1948), and in *Il foro padano*, Vol. 3, Sec. 4, p. 7 (1948). See also decision of Court of Appeals of Milan, January 27, 1948, reported in *Il foro padano*, Vol. 3, Sec. 4, p. 33 (1948), and articles by Francesco Carnelutti, "Abrogazione del reato di collaborazionismo," *Rivista penale*, pp. 34 ff. (1948), and Barile-Predieri, *op. cit.*, p. 81.

[55] Notably Court of Cassation, February 21, 1952, reported in *Orientamenti della giurisprudenza del lavoro*, Vol. 1, p. 203 (1952).

[56] Tribunal of Milan, April 18 to August 6, 1951, reported in *Orientamenti della giurisprudenza del lavoro*, Vol. 1, p. 205 (1952); Tribunal of Parma, November 3, 1951, reported in *Orientamenti della giurisprudenza del lavoro*, Vol. 1, p. 207 (1952). See also the discussion on this point in *Orientamenti della giurisprudenza del lavoro*, Vol. 1, pp. 208–13 (1952).

[57] Decision of July 24, 1950, reported in *Giurisprudenza italiana*, Vol. 102, Sec. 2, p. 353 (1950).

[58] Decision of December 16, 1950, reported in *Giurisprudenza italiana*, Vol. 103, Sec. 1, Part 2, p. 300 (1951), and in *Il foro padano*, Vol. 6, Sec. 4, p. 132 (1951). See also decision of the same Tribunal of June 29, 1949, reported in *Il foro padano*, Vol. 5, Sec. 4, p. 112 (1950).

Although the Constitutional Court has not been established, the High Court of Sicily has. This latter is set up in accordance with the provisions of the Sicilian Regional Constitution, and is empowered to judge the constitutionality of the laws passed by the Regional Assembly, of national laws in the light of the Sicilian Constitution, and the effectiveness of national laws within the region.[60]

The High Court of Sicily has handed down at least two decisions which have done their part in increasing the present confusion in Italian constitutional law. One decision declared unconstitutional a law of the National Parliament that would have permitted alterations in the Sicilian Constitution by Parliament through ordinary legislation rather than by constitutional amendment.[61] The other approved the validity of a regional law permitting issuance of bearer stock, which was in conflict with national legislation.

## CONCLUSION

The Seventy-five wrote, and the Constitutional Assembly approved, a Constitution that in spite of its ambiguity and excessive length was on the whole a good piece of work. The labor of giving birth to this Constitution, however, seems to have exhausted the democratic fervor that spread over Italy at the close of the war, and there has been no serious attempt to implement its provisions.

It seems that the new Constitution was the final achievement, at least for the present, of the liberal *Risorgimento* spirit that united Italy in the nineteenth century, only to peter out with the disappearnce from the political scene of men of the caliber of Cavour, D'Azeglio, Ricasoli, Mazzini, and Garibaldi. The enormity of Fascism and the Partisan movement reawakened this spirit, which was expressed in its highest political form by the ill-fated Action party.[62]

As so often happens in Italian history, the spirit of renewal and reform has been overcome by the forces of tradition. In Italy these forces are ubiquitous. One should not condemn too severely Parliament, the administration, and the courts for failure to implement and enforce the Constitution when there has been little popular demand for its implementation or enforcement. Although it preserves most of the old institutions, the new Constitution implies a spiritual revolution in which the majority of the Italian people, traditionally cynics in political matters, do not believe.

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[59] Decision of March 15, 1952, reported in *Il foro padano*, Vol. 7, Sec. 4, p. 9 (1952).

[60] Sicilian Constitution, Art. 25.

[61] High Court of the Region of Sicily, September 20, 1948, reported in *Giurisprudenza italiana*, Vol. 101, Sec. 1, Part 1, pp. 1 ff. (1949). This law was to have been effective for only two years.

[62] Jemolo, *Chiesa e stato*, pp. 718–719.

In spite of the formally effective new Constitution, Italy is actually being governed under much the same laws, and people, as during Fascism. There is no longer a King; the top Fascists are out; there is no longer a death penalty; there is no legally sanctioned racial discrimination; but the inertia of Parliament and the prejudices of the bureaucracy have resisted most of the changes envisaged in the new Constitution. Otherwise so modern, so youthful and so eager to adopt the newest and best from abroad, the Italian culture has a limited concept as to the practicability of political reform.

The Italian Constitution is essentially a liberal Constitution. The De Gasperi government is essentially Roman Catholic in political orientation. It can understand and actively support such welfare measures as a revolutionary land reform, an overhauling of the tax structure, and large public works programs to improve education and transportation, but it has little feeling for liberalism. The present government, therefore, is likely in time to implement the institutional changes planned in the Constitution, but it is less likely to implement the civil liberties provisions. Only if and when the dormant liberal spirit arises again in Italy, are these provisions apt to become really effective.

# THE POLITICS OF MANAGEMENT IMPROVEMENT IN THE STATES*

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In the wake of the Hoover Commission reports, a great majority of the states authorized special inquiries into the organization and operation of their executive institutions. With very few exceptions, the numerous postwar movements for state reorganization appear to have resulted in only moderate or negligible legislative acceptance of the reorganization proposals. The spectacle of such meager accomplishment from so much effort invites reflection on the politics of management improvement in the states.

Through the generous cooperation of professional colleagues about the country, data were assembled on the successes and failures of these reorganization movements, upon the initiation, organization, and scope of the surveys, and upon the methods of presenting the survey reports to the legislatures and to the public. The data cover thirty states, in twenty-four of which the state legislature has had at least one chance to consider commission recommendations. In the remaining six states[1] the reports are still in the process of preparation, or await legislative consideration. Included in the twenty-four are four states in which the study group has made some reports but continues in existence to make further reports, so that the success of the efforts in these states must be tentatively judged on the basis of legislative reception of reports so far received.

In only two of the twenty-four states—New Hampshire and New Jersey—was the legislative response pronouncedly positive. In New Hampshire, under the gubernatorial leadership of Sherman Adams, the legislature accepted all major proposals and all but one of an estimated 24 moderate-scale proposals. New Jersey is a special case in that this state was in a continual turmoil of constitutional revision and administrative reorganization efforts from 1941 into 1948, with five committees and commissions and a constitutional convention working on these problems and having among them some overlapping leadership. The commission created in 1944 to study administrative organization issued reports and recommendations serially over a period of years and received several positive legislative responses. In 1948, when the legislature met under a new constitution requiring all administrative agencies to be placed in no more than twenty departments, the legislature quickly completed a reorganization of the state's numerous agencies into fourteen statutory departments. This stage in New Jersey took place under the leadership of members of the commission created in 1944, including Governor Alfred E. Driscoll, and with the assistance of a joint legislative committee and strong, sympathetic party majorities in both houses.[2]

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[1] Indiana, Maine, New Mexico, Oklahoma, Pennsylvania, and Texas.

In contrast, in nine of the states[3] the legislative reception has either been completely negative or so slight as to be regarded as a soundly negative response. In thirteen states,[4] the legislative response has been ambivalent with a score—according to my rough weighted scoring method—of between twenty-nine and fifty-two per cent adoption. In about half these states with ambivalent legislative responses, the classification would have been negative on the basis of the acceptance of major proposals, and was saved from that category only by greater legislative receptivity to moderate- and minor-scale proposals.

For those of us who have participated in these reorganization efforts, the question may be: What did we do wrong? From a more detached point of view, the inquiry could run either in the direction of a critique of the content of reorganization proposals and organization theory or toward an inquiry into the politics of state administrative reorganization. Following the latter course and the view that reorganization is as much a political as a scientific process, I propose in this paper to investigate the conditions affecting the likelihood of legislative acceptance of Little Hoover Commission or similarly sourced proposals for state administrative changes.

## I. GENERAL ASSUMPTIONS

It is appropriate to state certain general assumptions at this point. Legislatures tend generally to be negative toward proposals for either moderate-scale or major changes in the formal allocation of influence in their governments. The formal organization of the executive branch is, among other things, a distribution of political power and influence which reaches beyond the confines of the executive branch. There is a strong probability of alliances between legislators and officers and groups having a stake in the present organization, and there is some particular negativism toward building the influence position of the governor. These may be, in part, corollaries to a condition of general conservatism in the legislative consideration of any proposed major changes in public policy.

Certain general conditions in a setting may tend to reduce legislative negativism toward major proposals. Possibly situations of either deep despair or high optimism regarding the fate of individuals and institutions generally may reduce legislative negativism. When horizons are low because of despair, it is easy to reason that any change is unlikely to worsen conditions and may improve them (e.g., Nebraska's shift to unicameralism and other depression changes in important state policy). When horizons are wide with general optimism, the risks of any change seem lessened (e.g., the many changes in the period from the late 1890's to World War I).

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[2] I am indebted for insights into these New Jersey matters to William Miller, Princeton Surveys, and Paul M. Douglas, Oberlin College.

[3] Alabama, California, Connecticut, Delaware, Iowa, Minnesota, Mississippi, Nebraska, and Ohio.

[4] Colorado, Illinois, Kansas, Kentucky, Massachusetts, Maryland, Michigan, Nevada, New York, Oregon, South Carolina, Utah, and Virginia.

If these assumptions have some validity, one may say that regardless of the immediate motivations of state reorganization activity, the excellence of surveys, the current political alignment or misalignment of the legislative houses and the governor's office, and the vigor and art of programs to interpret reorganization proposals to the public and to legislators, there is a good chance of failure in getting a positive legislative response. The existing institutions represent some sort of balance among existing forces. The usual negativism is such that a substantial share of the possible favorable conditions directly related to the reorganization effort will be needed in order to overcome what should be the expected negative legislative response. If one could time the starting of reorganization movements, probably periods of generally low personal expectations and—should they again occur in an area as large as a state—periods of high general optimism are most propitious.

## II. THE MOTIVES FOR REORGANIZATION STUDIES AND PROBABLE SUCCESS

The news that "good public administration is good politics" has obviously been getting around. There seem grounds for supposing that some political leaders have sought to reap some of the benefits of this proposition without paying the price.

If a reorganization study is undertaken for motives other than improved public management, it is quite probable that little will be accomplished. Motives of "getting into the act" by imitating other states and the national government, of diverting attention from other parts of the current scenery, or of creating supposed campaign advantages, seem to have been factors in the rash of Little Hoover Commission activity. Such motives may be exhausted in the study effort, leaving little or no motivation among the influential for the consideration and adoption of proposals. Further, if the mixed-objectives situation exists in the survey commission, the recommendations may be tailored for the accomplishment of public relations motives rather than with a view to making proposals having some chance for legislative adoption. Then too, if the motives of the proponents of a survey are suspected by the populace, the popular support generally necessary for legislative action may not be forthcoming. An administration survey undertaken halfheartedly and for devious reasons may nevertheless gather support and result in significant achievement. If I interpret accurately one of our participant's questionnaire responses, something like this may have happened in one state where the survey committee "brought temporary relief to a much harassed political organization" which was being harried in regard to services and taxes. The major problem of taxation was not resolved by the committee, but several of its reorganization proposals were adopted.

A nucleus of political leaders who clearly have good faith in seeking management improvement can quite likely find strong popular support for their proposals. This is a variant expression of the Brownlow-reported Wilsonian prescription to politico-administrators to "take high ground," for who can directly oppose improved administration? That private career motives may also be aided by this approach is generally not a detracting factor.

The muckrakers taught us that finding scandalous or notorious conditions is one way to provoke reform. Though one might question some of their methods and objectives, it does seem clear that the likelihood of positive action on administrative improvement is heightened if the inadequacy of existing administration has been publicly dramatized and if the motivation for reorganization activity arises out of protests at the dramatized inadequacies. It matters little that the breakdowns may have been personal moral lapses rather than the results of faulty administrative arrangements: the "ins" and their political allies are put on the defensive. They are vulnerable to an opposing political movement to reorganize the state government, or they may be persuaded to purify themselves in the public mind through measures for administration improvement.

Probably little planned help can be expected, however, from dramatized inadequacies. Crusading newspaper publishers and sophisticated reporters of state administration are seemingly scarce about state capitols. State government news seems to rank well behind national and local government news in the value systems of many publishers. With the best of will, the inadequacies of generally honest, but bumbling, public management are about as difficult to dramatize on a broad scale as is superior, professional public management. Those hopeful of a favorable moral and emotional climate for administrative reform probably must generally rely on the happenstances of defalcations, briberies, prison breaks, accidental patient and inmate deaths, failures of state structures, the discovery of fraudulent relief clients, and similar newsworthy calamities of life in the shadow of the dome.

It appears that the economy motive is still of relatively slight force in initiating administration improvement at the state level. In most states, the systems and levels of state taxation do not inflict sharp pains upon large, politically significant groups as do the local property tax and the national income tax. Although the lush state financial picture of 1943–45 is gone, it would appear that few, if any, states are making large numbers of taxpayers cry for professional state administration, as the taxpayers of hundreds of municipalities have sought relief from rising tax rates through council-manager government. Though this present judgment is, I believe, still correct, there is every indication that the economy motive may be heightened at the state level as a result of the rapidly growing state budgets and the trend toward shifting increasing amounts of the local government burden onto the payers of the state taxes.

State taxpayer organizations are, of course, present in many of our states, but their financial and political support seems to be limited largely to those particular elements of the business, financial, and industrial community having a direct economic concern with state taxes and state policy. Although such agencies are frequently vocal and active in the camp of administrative reform, the desire of the constituency to retain friendly state policy developers and enforcers can easily neutralize the taxpayer agencies in the political battles for legislative adoption of administrative changes which increase policy uncertainties. The utilities, banks, and insurance companies know where they stand with their current state regulatory agencies. Perhaps the present situation of state taxpayer pain as a motive for administrative reform can best be described as one in which the scattershot state tax systems provide substantial motivation for the consideration of change but frequently inadequate motivation for making changes.

### III. SPONSORSHIP AND REORGANIZATION SUCCESS

Hypothetically, it might be supposed that the opportunities for legislative enactment of reorganization proposals would be most favorable in a situation in which the survey is carried out under the leadership of the "outs," who thereupon become the "ins" and adopt their own recommendations before new vested interests are established in the offices to be eliminated. In 1948 Mr. Truman, with the cooperation of millions of voters, prevented the testing of this hypothesis at the national level, and, so far as has been learned, no state's reorganization activity falls exactly into this pattern.

Generally, we may agree that favorable auspices for reorganization activity would occur in the joint sponsorship of an administrative survey by a governor and legislative houses having majorities of the same political faith as the governor, with the recommendations received by the same alignment. One would also think that legislative council sponsorship would be auspicious in those states where the legislative council is well accepted as a source of legislative proposals; but in only one of the three such surveys was there significant achievement. In the South, gubernatorial sponsorship of administrative reform, with or without formal joint sponsorship by the legislature, appears to be generally auspicious. Sponsorship by a citizens' or taxpayers' organization may in some situations present feasibilities, especially if the private organization is given a temporary official connection or status by a co-sponsoring governor or legislature. The Colorado reorganization movement developed in this way. Sponsorship by the legislature through a special legislative committee or commission without formal sponsorship or participation by the governor is an alternative of rather dubious merit in most states.

In eight of the states in which there was no significant adoption of reorganization recommendations, the initiative came from the legislature in five instances. In three, the governor was the initiator or participated in the initiation. In one of these, the governor later withdrew his support, and the other two movements failed when "model" plans were rejected. In fifteen states where there was some significant adoption, governors participated in the initiation in ten, legislators were the apparent initiators in four, and a private agency sold the idea to legislators in the other one. Even more striking evidence of the significance of governors in these movements is seen in the fact that governors were active in the sponsorship of the movements in eight of the nine states adopting more than 40 per cent of the proposals, in my weighted measure.[5]

As to party divisions between the legislature and the governor, or between one house and the governor, we know that in some sharply partisan situations the division has been fatal to reorganization proposals, while in other circumstances it has not. In these latter situations, the political risks of giving the governor something for which he could take credit have apparently seemed less than the risks of killing a popularly supported measure. In Illinois, Maryland, and Massachusetts governors lacked party majorities in their legislatures, yet significant accomplishments were attained.

We have had ample evidence that legislative sponsorship of surveys does not forecast receptivity to recommendations and that governor-sponsors sometimes lose their enthusiasm for administrative reform. However, the legislators and governors are the "powers that be" in the formal government; and unless they are willing to give consideration to administrative alterations, there is no basis for any expectation of legislative action for management improvement.

With regard to political party leaders, it would seem that one must adopt the view that professional politicians, of whatever party, are likely to be no more than reluctant allies in moves for administration improvement. They have learned how to operate in the situation as it is and should generally not be expected to be enthusiastic for changes in the rules of a game in which they have perfected some art, unless such changes would remove some inconvenient obstacle.

Changes which have the tendency of making the formal government *the* government—the gathering into a neat hierarchy of most of the decision points—may be particularly well understood by and likewise obnoxious to the professional politicians. To the extent that the non-office-holding professional politicians have confidence in their ability to operate through the official hierarchy, this conclusion may need modification. Thus, one might find the party leaders of a regularly dominant party somewhat more receptive to proposals for administrative integration than the party leaders of a state with relatively evenly divided party contests where the chance of losing all direct influence is a risk to both parties. Likewise, in situations in which the leaders of both parties think the trend in statewide elections is toward dominance by their party, the opportunities for action may be improved. Generally, it would seem that assistance from the professional politicians can be expected only as a short-run compromise of their long-run objectives in order to support a popular issue. Governors and others with large fractions of influence can sometimes compel the professional politicians to take a passive, or even reluctantly a co-operating, role in reorganization legislation.

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[5] The eight states are Illinois, Kansas, Kentucky, Maryland, Massachusetts, New Hampshire, New Jersey, and Virginia. In the ninth state, Colorado, the governor appears to have cooperated in at least some parts of the movement. The influence of governors in these matters is illustrated by developments in Louisiana and Rhode Island where substantial major and moderate-scale reorganizations were adopted under the leadership of governors, without benefit of reorganization commissions. In Louisiana the changes were both in the direction of disintegration and integration, while in Rhode Island they were in the direction of integrating both central and departmental administration.

To round out the consideration of the political bases for reorganization activity, one must cite the almost automatic resistance to being "reorganized" of the leaders and clienteles of most administrative agencies. The Mississippi Legislative Fact-Finding Committee on Reorganization of State Government interviewed the head of each state agency, quizzing him on his reaction to creating conditions for greater efficiency by a program of consolidation. In a letter of transmittal, the Mississippi committee synthesized the uniform agency head response in the following words:

> I think this is one of the very best things that has ever been done in the State of Mississippi and I have long been of the opinion that this work should have been accomplished in the past. However, my department is of a type, character and kind that cannot be consolidated with any other agency, as its duties and functions are unique, and a reduction of personnel or a transfer of any duties of this department would work a hardship and prevent certain citizens from receiving benefits to which they are entitled.

Such reactions are familiar to all of us, and one must recognize that these agreeing opponents of reorganization commonly have large resources of political influence which they have cultivated in their daily work of agency survival and growth. A clientele organization controlling the policy of the fragment of state government that specially affects it is a potent and sure source of opposition to reorganization and a ready ally in log-rolling to preserve realms undisturbed among organizations similarly situated. There are, of course, exceptions in which the case for independence is so weak as to be indefensible or where politically weak agencies become ready to seek a formal alliance with a politically strong agency. There are also the existing departments which may stand to gain by consolidations, but their enthusiasm and power potentials frequently do not match those of the agencies which have decided that "you can't reorganize us." The pluralistic character of our political organization at the state level is probably best illustrated when typical general reorganization proposals are announced.

## IV. COMPOSITION AND ORGANIZATION OF COMMISSION

In considering the probable fate of commission proposals in terms of commission composition, it is probably of greatest importance that the members be persons of high general prestige and of actual political influence. It is normally not enough that they be respected, able, personally successful citizens. To express it crudely: How many votes can they swing in the legislature, and how effectively can they rally popular support? It is probably of next importance that the commission be so composed that it cannot be identified as representing any limited elements in the political spectrum of the state. The first of these considerations is expressed with a view toward the positive organization of support for the recommendations. The second, although indirectly beneficial to that end through broad representation, is expressed primarily as a defensive and cautionary concept with a view to avoiding the effective and easy labelling of the commission's effort as a minority report from a limited segment of the polity. Most other considerations with regard to commission composition are subsidiary or corollary to these two seemingly basic ones.

As to the value of legislator memberships, there are the to-be-hoped-for positive considerations of having leading legislators both committed to the recommendations and prepared to explain the proposals to their colleagues. There are, at the same time, the risks that particular legislator members will choose to entertain specific or general reservations about the recommendations and become in the inner chambers trained opponents of the proposals. There is the further risk that if an election intervenes between the formation of the commission and the legislative session which considers the report, some of the legislator members may become lame ducks and lose their influence, while others succeed to posts which remove them from the legislative arena.

The occasional lukewarmness of governors to commission proposals suggests the desirability of attempting to get commissions constructed so as to avoid this contingency. Although other means may be designed, the arrangement which allows the governor to appoint at least some of the members serves to involve him and may make some member the governor's delegate who keeps the governor informed about and possibly privately committed to the commission's work, step by step.

It is, of course, desirable that commission members be well informed about a state's executive organization and about the feasibilities of political action in the state, and it would be presumed that persons of high prestige and influence in state affairs could generally fulfill these requirements. Former governors and others who have been near the center of the complex of executive-legislative forces, if they have escaped with their reputations fairly well intact, may have particularly valuable contributions to make to a commission's endeavors and may have an authority of personal knowledge of large weight. Even some unsuccessful candidates for governor may have thought more about the executive problems of the state than most citizens. All of these considerations have been evident in our data, and in states where it is appropriate the bipartisan theme has been emphasized. There are other important personal qualities, such as the disposition and ability to work with others towards agreement in the conference situation and ability in public expositions of the commission's work. But these are minor compared with the individual prestige and influence of the members and the invulnerability of the members collectively to easy attack.

Commission size in our data varied from four to forty-one members, with each extreme having some successes in adoptions. About three-quarters of the groups had from seven to thirteen members, and size, except for the risk of unrepresentativeness in smaller commissions, has no apparent relation to success.

Certain of the commissions have had advisory committees. The success in New Hampshire where this device was used suggests the desirability of giving careful consideration to adaptations of this arrangement. An advisory group of over thirty participated with the nine commission members in subcommittees, studying and making recommendations for particular areas. This group, along with the commission members, actively organized the public campaign for the adoption of proposals.[6] The New Hampshire story suggests that the advisory committee was not a decisive factor in their success; rather, it was one of several important contributing factors.

The Oregon interim legislative committee on state organization, which had significant successes, created an advisory committee of six university professors. Although most of us might agree that this was a wise move, I have no information regarding the role played by these professional advisers, unless it is reflected in our respondent's comment that "the staff work, while quite limited, was of high quality. . . ." The Minnesota commission divided into committees to which approximately 150 citizens were added. In this case, it appears that the added members participated in the investigatory work and the committee deliberations.

## V. ORGANIZATION, SCOPE, AND METHOD OF SURVEY

In considering the scope of surveys, factors such as the terms of the authorization of the survey, the issues which precipitate the survey, the present condition of state administration, time, money, and the judgment of the commission or director may be determinative. It is with this exercise of judgment that we may be most appropriately concerned here. It has been the fashion to make the scope broad and to be expansive in the setting of objectives. Insofar as our professional craft has influenced these decisions, it is probably understandable that we have wanted to give the states the full benefit of our knowledge and wisdom. The state does not ask for our prescription every year. All too frequently, it would appear, commissions and advisers have not curbed these perfectionist inclinations; and where the authorization is broad and the time and funds are adequate, there may seem to be no alternative to the making of large plans.

Although in some states the conditions of state administration may almost compel the making of broad prescriptions, prudent judgment in the interest of securing some positive accomplishment may dictate the curbing of scope and the concentration of efforts on the areas of greatest vulnerability and the areas of greatest practicable gains. The device of being prescriptive on certain points and of being only educational on others, with suggestions of alternatives or of areas for further study, is frequently preferable. The generally limited results of the completed surveys suggest strongly that the planners of additional surveys give hard thought to the question: What are the feasible objectives of this survey?

The fact that constitutional proposals were made in all the states (with the possible exception of Delaware) in which the legislative response was negative is suggestive. Of the fifteen states in which there was significant legislative accomplishment, only six of the reorganization proposals included constitutional amendments.[7] In most of the states where the scope of the survey was limited or the proposals have concentrated on a relatively few objectives, there has been some significant legislative acceptance of recommendations. The fact that the New Hampshire proposals were not perfectionist in any doctrinaire fashion seems relevant also.

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[6] John D. Langmuir, "New Hampshire Secures Partial Reorganization," *National Municipal Review*, Vol. 39, pp. 344–46 (July, 1950).

Rather definitely to be avoided, at least on the basis of the Connecticut experience and perhaps that of other states, is the stretching of the scope beyond that understood by the authorizing body. Reorganization movements have sufficient hazards without raising the question of the legitimacy of the progeny.

In organizing general surveys, the commissions have apparently learned not to turn the whole job over to one of the national consulting firms. Monumental as the surveys and reports of these agencies have been, and useful as they may remain for various educational purposes, they have rarely been the means of producing directly positive legislative responses. Only Delaware and Virginia, among the states on which we have postwar data, turned the survey job over to one of the national consulting firms and in Delaware the accomplishment was nil. South Carolina, in a 1942–45 survey using a different national organization, had a similar experience, although a later attempt apparently using home grown talent was somewhat more successful. The outside firm arrangement creates several risks. There may not be enough participation by the commission and others for them to become parties to the conclusions and to gain an understanding of the proposals for purposes of communicating them persuasively. There is the risk that the surveyors may give too little attention to feasibilities, local values, and traditions. There is the ease of labelling the surveyors as foreign experts and thus as ignorant men so far as local conditions are concerned. With the best of will on the part of the consulting firms, continued consultation for the purpose of making explanations and modifications is likely to be difficult when the surveyors have to be pulled off new jobs and must travel back to the scene for necessarily limited periods. These observations relate solely to the use of consultant organizations for the whole survey job and not to their use on particular area surveys, as a task force, nor to their use as adviser consultants in planning surveys or reports where the survey work is done by the commission and other local agencies or consulting firms.

Although it is not a completely reliable touchstone, the engagement as survey director of a professional researcher already having some experience in the state and a favorable local reputation seems to be auspicious. Of fourteen states having some significant reorganization accomplishment for which this information is available, eleven had arrangements something like the above prescription. In several of the states with negative legislative results, the research direction seems as auspicious as in those above; but in more of them the research director had generally had less direct experience with the state government or very brief experience with the state. In one case, the director was apparently not a professional governmental researcher, although he had had state government experience.

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[7] The states in which specific constitutional proposals were not made are Illinois, Kansas, Massachusetts, Nevada, New Hampshire, New York, South Carolina, Utah, and Virginia.

If the governmental researcher skill group about state capitols and in nearby institutions is a superior hunting ground for survey directors, why is this so? Certainly these individuals have a head start in knowledge of state institutions. Also, they may already have in existence the nucleus of a research staff upon which to build. They are likely to continue available for the persuasion and modification stages. Finally, these individuals probably have a superior sensitivity to the feasible, the vulnerable, and the immobile and possess an authority based on the personal confidence of legislators and others in their abilities and trustworthiness. Some of them may also be able to give positive assistance in the political dynamics.

Whether task forces are used, whether specialists in functions survey the functions, whether "generalists" are used, whether the data collection on operations is heavy, moderate or slight—just so it doesn't seem to be altogether sketchy—appear to be of relatively little consequence in determining the fate of proposals for legislation on reorganization. Probably the heavy data collections are generally wasted effort, except where detailed legislation on procedures is being sought. Winners and losers have tried all methods. Perhaps the sales engineer needs to know only somewhat more about the products than do the customers. Having a few distinguished specialists may help lend authority to proposals and some of them may ease the gathering of the essential minimum of information in a field, but Connecticut, as well as other examples, illustrates the fact that having numbers of blue ribbon task force leaders does not sell the proposals. Giving attention to minor- and moderate-scale proposals seems to be somewhat controversial, some regarding it as likely to distract attention from the major proposals or otherwise disapproving of it. Most of the surveys have given attention to the lesser aspects of affairs and their successes have been largely in this area. This approach probably does distract attention, but it may also be a means of getting the legislature started in making positive responses so that the consideration of more moderate- and major-scale proposals may continue with possible favorable action. Some accomplishment, even though it be not of a first order, is a great solace to the participants and avoids the reputation of a fiasco, so that the start of future efforts may be easier. Where administration is generally good, details may be the appropriate objects of attention.

The plans in which committee consideration of reorganization is spread over a period of time, or indefinitely, with interim reports and recommendations from time to time, vary from the usual procedure. In some of these situations, as in New York, California and Massachusetts, the widespread use of legislative interim committees with vague deadlines seems to be habitual, and the prospect of results is probably closely related to the motives of the committee members and their influence in their houses, with governors possibly providing significant overtones. In Maryland, however, it is apparently the plan to complete the work before some not too distant date, but to report and recommend as studies of specific areas are completed. This approach may have the merits of concentrating attention on particular proposals and of avoiding having all the wolves howling at once. However, it risks a collapse of the movement following an adverse legislative response to the first recommendations.

## VI. PRESENTATION OF SURVEY REPORT AND RECOMMENDATIONS

At least two related major considerations bear on the presentation of survey reports and recommendations. One concerns the attempts to influence the politically potent directly; the other has to do with attempts to interest the public widely so that there may be strong popular support nudging the politically potent toward action. As minimums in these two categories, one may expect the preparation of bills and appearances by the commission and its staff before legislative committees and the publication and distribution of a report with newspaper notice of the event. The varieties and variable intensities of additional efforts in the several state reorganization movements cannot all be catalogued and measured; but one can safely risk the proposition that it is the measures in addition to the minimum which generally produce the positive responses.

Measures to influence the more powerful include keeping the governor informed, interested and pleased so that he may be ready to use his influence on the legislature and the "wounded" agency heads, and the inclusion on the commission or advisory bodies of individuals with large direct political influence. In New Hampshire and Maryland explanation sessions on the proposals were held for groups of legislators about the state, presumably before the sessions at which the proposals were considered. In Utah the executives of private agencies which constitute the important lobbies about the legislature were cultivated, with efforts to neutralize them or to make them allies on the reorganization issues. In Kansas and other states some individuals representing these interests were on the commission. In states where the current configurations of political power are relatively simple, measures such as these may be adequate. In the more complex states, and anywhere in case of doubt, measures for inducing popular interest in reorganization are, of course, appropriate.

Some legislatures, in authorizing reorganization surveys, have restricted the press and public campaign opportunities by requiring a single report and directly, or in effect, extinguishing the commission upon the submission of its report. How strictly these directions are followed may depend upon the consciences and dexterities of the commission leaders. On the other hand, in Michigan there were three press releases on each of thirty reports over a two-year period, and one wonders if the human capacity for interest in reorganization may have been satiated. The device of releasing the report in chapters over a period of about two weeks has proved an effective way of getting large amounts of publicity and of producing public discussion of the report.

These considerations raise the question of secrecy for the proposals being considered and the trends of commission thought during the survey and report preparation stages. There is the quite natural tendency of commissions to attempt to minimize the pulling and hauling of contending forces about them which would be stimulated by news of commission thinking, and a like tendency to ease the altering of decisions by avoiding early tentative public commitments. There is possibly also some thought in this approach of giving the opponents less time to prepare their defenses. However, in most reorganization surveys the news gets around as to some of the commission views, and rumors and surmises based on inferences flow freely. If to these considerations are added the New Hampshire free press experience and the general tendency to involve larger numbers in the commission effort, one wonders if a nearly complete goldfish bowl policy isn't worthy of further trial. For the participants in the survey, it is undoubtedly a less comfortable, more tense situation than secret or semi-secret deliberations. The researchers should be stimulated to harder thought about the premises underlying their proposals and about the arguments and data which support these premises when their proposals and data formulations are to be opened quickly for public discussion. The injured may damage their case as much as they help it if the commission can maintain a mood of sweet reasonableness.

If a campaign for public support is to be conducted, there must be time for it as well as organization. Several of our surveys have had difficulties with their timing, getting their reports out just as legislative sessions were scheduled to meet or after sessions were well under way. All of us know some of the reasons why reports are late in appearing, but the difficulties encountered through late reporting suggest the desirability of curbing tendencies toward perfectionism and of leaving time in which public discussion of a completed report can be organized.

In the campaigns, newspapers, radio, and, in some areas, television, are media which have been used with some apparent success. Literature appropriate for mass distribution has been tried, particularly in Michigan. The device of the public forum has proved effective, particularly in New Hampshire, where over 300 such meetings were held before all sorts of organized groups. A one-day institute at the University of New Hampshire possibly helped train some of the people who participated in the forums.

The form of the commission report is, of course, significant in the campaign. If it is written and printed in a manner to stimulate wide reading, it can help. However, the generally limited success of reorganization efforts suggests the desirability of not keeping the report so simple that the substantial data relating to the proposals are omitted and are thus not readily available for later consideration of the original and alternative proposals.

In relation to the organization of mass campaigns, it seems in point to note that legislative council research directors and other similar types of persons who may direct surveys generally have disabilities for leading mass political action. For quite appropriate reasons, these researchers frequently cultivate political neutrality and the judicial habit of giving opinions only when properly requested. The university bureaus of governmental research also frequently have a cautious orientation toward political action. If these persons or agencies are leaders in the survey job, it may be appropriate for them to indicate clearly the limits within which they operate so that the commission, committee, or council can plan for and organize other leadership for a mass campaign. In contrast, survey directors who are heads of citizen or taxpayer organizations are generally in their element in the attempted organization of popular support. This has been the experience in Colorado and Michigan.

It is also to be noted that even legislative councils, which are accustomed to making legislative proposals, as well as many legislative interim committees, exercise restraint in organizing campaigns for popular support for their proposals. The courtesies among legislators, though somewhat indistinct, do not generally permit the indiscriminate building of fires under colleagues through mass political action.

The device embodied in the federal reorganization enabling acts of authorizing a chief executive to submit reorganization plans to the legislature, with the plans going into effect unless the legislature takes positive action to veto them, has had very slight use in the states. This attempt to put inertia and indecision on the side of change has been considered in a number of states but has been rejected, apparently generally in fear of adverse decisions on constitutionality. So far as has been learned, only in New Hampshire and South Carolina was legislation authorizing such plans adopted; and in New Hampshire this method was dropped when a request by Governor and Council to the Supreme Court for an opinion on the constitutionality of the procedure brought an adverse report.[8] In South Carolina the device was provided for in their 1948 reorganization act (Act 621 of 1948), and, of nine plans submitted, three were allowed to become effective, one of the three being an alternative to one of the rejected plans.[9]

In view of the usual result of partial or complete failure in reorganization movements, it is appropriate to consider how it may be possible to keep the movements in existence so that the proposals may have additional chances for consideration. Inside of government there are the possibilities that a governor may continue to press for action, that an interim committee to give further consideration may be formed, or that a legislative council may receive such an assignment, or, if it was the survey group, may continue the studies and resubmit proposals. In several states a legislative research agency is filling such a role. In Nevada, a legislative research agency is going this year into its third legislative session with its administrative survey proposals; some of its proposals were adopted in each of the first two sessions.

Outside of government are the existing private civic agencies and groups and newly formed citizens' committees to support the reorganization proposals in imitation of the national committee. Examples of the latter are to be found in Michigan and Minnesota. Some of these agencies and groups may have difficulty avoiding the label of special pleader and others may be amateurish at times; but when their actions are coordinated with similar moves inside government, action sometimes takes place. Even when a reorganization movement has been such a failure that no one wants to nourish it back into existence, the following years and even decades may see action on particular points treated or suggested in the survey. Although our frame of reference is legislative action following surveys, it is perhaps permissible to say that these reorganization studies and proposals have values in civic education regardless of the legislative accomplishments of the movements and that they sometimes stimulate agency-sponsored administrative improvement programs. The education of legislators and the stimulation of executive offices into thought about management may produce gains which in time justify the costs and efforts of the survey.

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[8] Letter from *George H. Deming, University of New Hampshire.*

[9] Letter from George R. Sherrill, University of South Carolina.

## VII. LEGISLATORS' VIEW OF THE PROPOSALS

Previous reference to the nature of the reorganization proposals themselves have been oblique. They will not be analyzed here in any detail. The Council of State Governments' *Reorganizing State Governments*, published in 1950, analyzes the recommendations of the state commissions as of that date. There seems to be little change in the later developments except perhaps for some new emphasis on legislative financial controls.

What is generally in controversy and what is in point here is the executive-management-unity-of-command-single-head-departments-centralized-auxiliary-services pattern. In the nineteen general surveys which have in some sense been completed and for which we have data on this point, fifteen embodied in their report some version of the theme of making administration responsible to executive political authority. It would thus seem that among the surveyors the executive-management-unity-of-command ideas still tend to prevail. When one looks at the adoption of *major* proposals in these fifteen states, he finds New Hampshire's and New Jersey's large successes and some fraction of adoption in Colorado, Nevada, Oregon, South Carolina, and Virginia, and almost no adoption of major proposals in the others. As the New Hampshire proposals tended to be very mild in their expression of the executive management concept, and as the enactment of major proposals has otherwise been quite slight, one can, I believe, assume a rather general resistance on the part of legislatures to the full acceptance of the executive management theme. There seems to be some willingness to give the governor added or enlarged tools for influencing management, but the unity-of-command-single-head administrative agency pattern seems to have limited attractiveness to the legislatures, perhaps less than in the 'twenties and 'thirties.

If these inferences are correct, we may, insofar as the content of proposals has influenced legislative reactions, have a situation of conflicting values and viewpoints. There is no way in logic to reconcile differences resulting from affinities for conflicting premises, and there is no point in attempting it. If some legislators want to think of reorganization proposals in terms of how they affect employees Mabel and Joe, the sportsmen and the dentists, and of how the likely officeholders they know about fit the gubernatorial and department head thrones prepared for them in a reorganization plan, these ways of thinking are to be expected. If other legislators, some governors, citizens, and students of state administration want to think in terms of countering the centrifugal tendencies toward governments for every group and region within a loose holding corporation state government and of creating conditions which are more favorable for the resolution of conflicts, for the coordination of those activities which may with economy be coordinated, for the location of responsibility for executive development and execution of policy, and for the development, preservation, and communication of the arts of professional management and professional performance of functions, these ways of thinking are also to be expected. Whatever one thinks of these varied expectations, there is for the professional participant in movements for administrative change no basis for being doctrinaire. There is rather an opportunity to try to find the accommodations to these various values which can be arrived at currently in enactable measures. What is arrived at in reorganization proposals may not be neat in pattern and may look both toward integration and particularism, but if the conditions for developing professional administration are bettered, that is much to be preferred than having copies of a rejected "model" report.

Certainly to be avoided is the highly vulnerable position of asserting that economy or better services will flow from the enactment of reorganization plans. Any legislator knows that the occupants of the governor's and commissioners' chairs may have as their better talents and primary interests other matters than the general management of large enterprises. What they may not know and can perhaps be taught by modest demonstrations is that better services and economies can be attained by creating the conditions in which many people in the administration search regularly and broadly for optimum methods and arrangements for performing public tasks.

# THE HOOVER COMMISSION'S PERSONNEL RECOMMENDATIONS—A PROGRESS REPORT

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The Hoover Commission's personnel management report was published on February 9, 1949, early in the first session of the 81st Congress.[1] Four sessions of the Congress have had an opportunity to act on the report, and the executive branch has had four years to take advantage of those recommendations that could be adopted by administrative action. This seems to be an appropriate time, therefore, to review the record of progress in both legislative and executive branches, in order to learn the extent to which these far-reaching recommendations for improvement of federal personnel management have been adopted.

Soon after publication of the report, intensive study and discussions began within the executive branch. The Civil Service Commission sent a preliminary memorandum of its views to the President on March 23, 1949, with a transmittal letter referring to the report as a "constructive document," and agreeing with the objective of establishing a civilian career service.[2] The Federal Personnel Council, composed of personnel directors of federal agencies and representatives of the Civil Service Commission and the Bureau of the Budget, made a detailed study of the report and submitted a number of comments to the Civil Service Commission.[3] The Council endorsed most of the recommendations and suggested perfecting amendments to others, particularly those dealing with performance ratings and reductions in force.

Comprehensive bills embodying all personnel recommendations of the Hoover Commission that required legislation were introduced in June, 1949 by Senator McCarthy (S. 2111) and Representative Clare E. Hoffman (H. R. 5181) under the title "Federal Personnel Policy Act of 1949." Thus began intensive legislative activity in the form of hearings, committee reports, and revised bills that continued throughout the 81st and 82nd Congresses. Detailed consideration of the complex sequence of events in the executive and legislative branches is beyond the scope of this paper, but major developments are discussed under the subject headings below, which are arranged in the general order of the Hoover Commission recommendations.

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* The opinions expressed in this article are the writer's and are not to be construed as those of the U. S. Civil Service Commission.

[1] Commission on Organization of the Executive Branch of the Government, *Personnel Management* (Washington, 1949).

[2] The memorandum (15 pp.) has not been published, but the Commission used much of the material in a report to the Senate Committee on Expenditures in the Executive Departments in July, 1949. See the Committee's press release of July 26, 1949. The *66th Annual Report of the U. S. Civil Service Commission* (Washington, 1949) likewise gives the Commission's position on the major Hoover Commission recommendations (pp. 2–10).

[3] See Federal Personnel Council's mimeographed report (Washington, July 21, 1949).

*Staff Functions of the Civil Service Commission.* The Hoover Commission's first and fundamental recommendation was that the Civil Service Commission place primary emphasis on staff functions, rather than upon "processing a multitude of personnel transactions." While the Civil Service Commission still performs many operating functions, the past ten years show a trend in the direction advocated. This trend began early in World War II, when the Commission delegated authority to agency heads to take final action on such matters as employee reassignments and promotions. At the end of World War II a definite effort was made to carry over the benefits of decentralized administration into peacetime operations.[4] Executive Order No. 9830 of February 24, 1947, enunciated the principle of decentralized personnel management in the following terms:

> Personnel management is a primary responsibility of all who plan, direct, or supervise the work of Federal employees. . . . The Commission shall . . . delegate to the agencies its authority to act in personnel matters in accordance with standards issued by the Commission. . . .

The Hoover Commission's recommendation for expanding the Commission's staff functions has unquestionably strengthened the movement toward decentralized personnel operations. In the legislative field, two important acts of Congress reflect the Hoover Commission's influence: the Classification Act of 1949 (63 *Stat.* 954) and the Performance Rating Act of 1950 (64 *Stat.* 1098), both of which recognized the Civil Service Commission as a standard-setting rather than an operating agency. In the executive branch some progress in this direction has been made by expanding the program for boards of civil-service examiners, by setting standards governing agency promotion programs, and by establishing guidelines for agency personnel programs. The Korean emergency stimulated a new wave of delegation from the Commission to the agencies.[5]

The Commission's Inspection Service, established in 1946 to check on delegated authorities under the decentralization program, has broadened its scope to emphasize a positive program of assistance to agency personnel offices. As a result of periodic visits by inspectors to review agency personnel operations, both in Washington and the field, this service has accumulated a fund of information on agency personnel management. It receives frequent requests from personnel officers for advice on such matters as installation of new promotion programs and selection of materials for training courses.

On the other hand, the Civil Service Commission still operates a centralized system of conducting record checks and inquiries regarding the loyalty of applicants for federal employment, of adjudicating retirement claims, and of maintaining service records of all federal employees. The Commission's present dichotomous role is recognized in its current internal instructions:

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[4] See Gladys M. Kammerer, "Revolution by Decentralization," *Public Personnel Review*, Vol. 13, pp. 137–42 (July, 1952).

[5] *68th Annual Report of the U. S. Civil Service Commission* (Washington, 1951).

> The U. S. Civil Service Commission has two very definite, yet very different roles in the field of Federal personnel administration.
>
> One is to serve as a management arm of the President, and in this capacity to make top policy decisions and develop relationships between the agencies, the Commission, and the Bureau of the Budget which will provide the leadership in Federal personnel administration that the President would provide if he had the time to do so.
>
> The other role is that of an operating agency charged with the responsibility of administering certain Federal personnel programs as required by various acts of the Congress.

While the line between staff and operating functions may shift within the Commission's total program, there probably will always be a certain number of personnel services which must be performed centrally, either in the Commission or elsewhere.[6]

*Reorganization of the Civil Service Commission.* The Hoover Commission recommended that the Civil Service Commission be reorganized to vest in its chairman full responsibility for the administrative direction of its work. Reorganization Plan No. 5 of 1949 promptly carried out the principal features of this recommendation.[7] Under this plan the title of the Commission's head official was changed from "president" to "chairman," and he was given full responsibility for administrative direction of the Commission's day-to-day operations, with a few exceptions such as appeals and appointments to key staff positions. The other two Commissioners and the Chairman serve together as a policy-making, appellate, and investigating body for general supervision of the merit system. The new organization represents a compromise between the previous plan of a commission of three members, each with equal administrative responsibility, and the controversial recommendation of the President's Committee on Administrative Management in 1937 for a single civil-service administrator assisted by a civil service board of prominent citizens.[8] Three years of operation under the plan seem to indicate that it is serving its dual purpose of speeding up internal operations and freeing the other two Commissioners to concentrate on appeals and improvements in policy. Nevertheless it is already apparent that the compromise will not satisfy the proponents of the single-administrator type of personnel authority.[9]

Reorganization Plan No. 5 did not adopt the Hoover Commission's proposal that the Civil Service Chairman should serve "in the President's Office in a coordinate capacity with such officials as the Director of the Office of the Budget." This issue was revived in the 82nd Congress, when Senator McClellan and 13 colleagues introduced the "General Executive Management Bill" (S. 1134), incorporating a number of the Hoover Commission proposals. Chairman Ramspeck indicated his disagreement, stating that "The position of Chairman of the Civil Service Commission, I can assure you, is a full-time job," and that the responsibility of advising the President on the diverse personnel systems of the executive branch constituted a separate full-time job. He felt that the President's liaison officer for personnel management effectively fulfilled the latter need.[10]

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[6] Commissioner James K. Pollock, in his vigorous dissent to the personnel management report, recommended that the residual operating activities of the Civil Service Commission, such as retirement, be transferred to an Office of General Services (*Personnel Management*, p. 52).

[7] H. Doc. No. 226, 81st Cong., 1st Sess., 1949.

[8] Floyd W. Reeves and Paul T. David, *Personnel Administration in the Federal Service*, pp. 6–7 (Washington, 1937).

[9] For example, see Bradley D. Nash, *Staffing the Presidency* (National Planning Association Pamphlet No. 80, Washington, 1952).

*Role of the Personnel Director.* The Hoover Commission recommended that personnel directors be made members of the "top management staffs" of all departments and agencies and that they be consulted on personnel matters whenever important management policies are being developed.

Through the influence of the President's Committee on Administrative Management, the basic transition between the former chief clerk system and a system of personnel directors had been completed some years before the Hoover Commission study.[11] Executive Order No. 7916 of June 24, 1938, which resulted directly from the Committee's work, required each agency to appoint a "director of personnel supervision and management," a rather unfortunate title for a staff official. This order was superseded by Executive Order No. 9830, which required the head of each agency to " . . . designate a director of personnel or other similar responsible official. . . . " The latter order attempted to establish the personnel director's influence in the following terms: "Such director or other official shall represent the head of the agency in personnel matters, subject to his instructions."

Even though most federal departments and agencies employed personnel directors in 1949, the Hoover Commission recognized that in many cases their activity was limited to the formal paper work of personnel management. The influence of its recommendation is difficult to assess. Some indication of the place of federal personnel directors in top management councils is afforded by the grade classification of their positions. At the time of the Hoover Commission study, the typical grade of the personnel director in a large organization was CAF-15. Under the new Classification Act, three new grades have been added to the former grade ceiling of CAF-15. Four directors of personnel have achieved the lowest rung in these so-called "super grades," the top personnel positions in the Departments of Agriculture, Commerce, Treasury, and Air Force having been placed in grade GS-16. It could be argued that in relative rank the personnel directors have lost ground since 1949, since they are now in the third or fourth career rank instead of the first. This classification criterion indicates that much greater progress was made in increasing the stature of personnel officials between 1937 and 1948 than in the briefer period since then.

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[10] *Hearings before the Committee on Expenditures in the Executive Departments . . . on Bills Relating to Commission on Organization,* U. S. House, 82nd Cong., 2nd Sess. (1952), p. 128.

[11] Reeves and David (cited above, n. 8), pp. 6, 7, 31–36.

The President's Committee on Administrative Management found that in 1937 top personnel officials were usually classified in grades CAF-11 or 12, with a few in CAF-13 or 14.[12]

Possibly a more valid method of evaluating the personnel director's role would be to determine the extent to which he can actually speak for his agency head. This might be done by comparing positions taken by the personnel directors at the Federal Personnel Council with official positions on the same issues later taken by their superiors. It may be significant that the Bureau of the Budget still requests written reports from agency heads when clearing drafts of personnel legislation or executive orders, instead of relying exclusively on the Council's views. In any event, considerably more progress must be made before federal personnel directors can enjoy the prestige of their colleagues in private life who have achieved such titles as "vice president in charge of industrial relations."[13]

A related recommendation of the Hoover Commission was that personnel officials serve in an advisory capacity only, with most personnel activities being carried on by operating officials. Executive Order No. 9830 had aimed at this objective in the following words:

> Authority for the conduct of personnel matters within each agency should be delegated to the extent compatible with provisions of law and with economical and efficient administration to those officials responsible for planning, directing, and supervising the work of others.

The military departments have taken the leadership in delegating authority for civilian personnel matters from headquarters to local commanding officers. The Post Office Department has made considerable progress in the last year or two in delegating final appointing authority to postmasters of several hundred of its largest offices. Some agencies, on the other hand, still operate on a fairly centralized basis, in that appointments and removals even in the lower grades must be referred to Washington headquarters for approval. For several years the Civil Service Commission has urged agencies to delegate personnel authority.[14]

*Standards for Agency Personnel Office Operations.* The Hoover Commission urged that the Civil Service Commission develop standards for the operation of agency personnel offices, so that each agency head could tell whether his personnel force was overstaffed. This recommendation reflected a feeling that personnel administration in the federal service had become overdeveloped.

Encouraging progress in making this recommendation effective can be reported. On January 17, 1950, President Truman issued a statement in which he gave "approval and strong support" to a recommendation of his Committee on Management Improvement that "To improve the operation of agency personnel offices, the Commission will define the nature and scope of agency personnel programs and develop improved operating practices and standards." This was the first clear-cut authorization to the Commission to proceed in this field. Under the directive, the Commission issued a handbook entitled *Basic Personnel Records and Files System for Federal Agencies* (Handbook S812, October 12, 1950). It was prepared by the Bureau of the Budget and the Commission with agency cooperation and prescribes an integrated system for maintaining personnel records. By standardizing record-keeping, the handbook frees resources for more important phases of the personnel program. The Commission has also issued a new chapter in the *Federal Personnel Manual* entitled "Guides for Determining the Nature and Scope of Agency Personnel Programs." These guides, written with the help of the Federal Personnel Council, list the minimum acceptable standards for an agency personnel program. They include standards under such headings as "position classification," "promotion," "employee performance evaluation," and "employee development." The guides provide a check-list for agencies and are used by the Commission's inspectors in determining whether an agency has a satisfactory personnel program. They represent a new development in civil-service administration, since state and local civil-service systems do not generally prescribe standards for departmental personnel administration. The guides are now being revised and strengthened on the basis of a year's experience in their use.

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[12] Reeves and David, p. 33.

[13] For a discussion of the role of the personnel office in government, with particular reference to the federal service, see William E. Mosher, J. Donald Kingsley, and O. Glenn Stahl, *Public Personnel Administration* (New York, 1950), pp. 571–89.

[14] See *60th Annual Report* (1943), pp. 6–7.

Standards for determining whether a personnel office is properly staffed were developed by the Bureau of the Budget in 1948 in response to a request from the House Appropriations Committee. This emphasis on staffing standards reflected the findings of the House Committee on Post Office and Civil Service.[15] The Committee discovered that personnel workers had tripled in number since 1940, while the total size of the service had only doubled. Some departments had ratios as high as 1 personnel worker to every 50 employees. As a general yardstick, the Bureau of the Budget set a ratio of 1 personnel worker to 103 employees but exceptions were allowed for agencies having unusual conditions such as large seasonal employment or abnormal turnover rates. The Congress did not consider this ratio sufficiently stringent, and established a statutory ratio of 1 to 115 for all independent agencies by a rider to the 1950 Independent Offices Appropriation Act (63 *Stat.* 631). This ratio has since been tightened to 1 to 135 by the 1953 act (P.L. 455). The Department of Labor and the Federal Security Agency operate under a statutory ratio of 1 to 105. Most other departments and agencies have no statutory ratio but are subject to the original ratio administratively applied by the Bureau of the Budget.

Emphasis on personnel ratios has had a mixed effect. While some agencies have shifted personnel work to operating officials, others have re-centralized the work from subordinate levels back to the headquarters personnel office. Many personnel officials state that ratios have hampered constructive developmental work while regulatory "paper work" has necessarily continued. Unfortunately the numerical ratio does not measure the quality of the personnel services rendered.[16]

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[15] H. Rept. No. 1593, 80th Cong., 2nd Sess., 1948.

A satisfactory solution to the personnel office staffing problem has not yet been achieved. Variations from agency to agency in personnel operations are so wide that development of realistic staffing standards is extremely difficult. Strengthening of the Commission's program guides would seem to form an appropriate first step, since a personnel program must be defined before its staffing requirements can be determined. As a further step the Budget Bureau has requested the Commission to undertake a study of the problem.

*Responsibility for Recruitment and Examining.* This is at the heart of the controversy between the Hoover Commission proponents and those favoring the *status quo*. The essence of the disagreement lies in the Hoover Commission's recommendation that "primary responsibility" for recruiting and examining federal employees be transferred from the Civil Service Commission, where it has been since 1883, to the departments and agencies. In its letter to the President of March 23, 1949, the Civil Service Commission opposed the proposal. The major veterans' organizations and employee unions also vigorously opposed this recommendation. Some spokesmen expressed the belief that the Commission's postwar decentralization plan had already gone too far and that the trend should move back towards a centralized plan of operations.

No congressional action was taken on the Federal Personnel Policy bills because of the opposition of veterans' groups. In the spring of 1950 staff members of the House Committee on Post Office and Civil Service, the Bureau of the Budget, and the Civil Service Commission drafted a revised bill with the hope of meeting the principal objections raised to S. 2111. This bill was limited to matters of recruitment, examination, transfer, and procedural standards. The key provision lay in section 3 (a):

> It shall be the duty and responsibility of the Commission to maintain and protect a system of recruitment, examination, certification, and selection of persons for competitive civil-service positions in the departments which will result in open competition and selection on merit.

This draft was introduced as the Federal Personnel Recruitment Act (H. R. 8925) by Chairman Murray of the House Committee on Post Office and Civil Service. Senator Frear introduced a companion bill, S. 3830, and hearings were conducted by both House and Senate Committees. The Civil Service Commission endorsed the bills, stating that they represented a merging of the best features of the Hoover Commission proposals with existing civil-service procedures. Chairman Mitchell's letter of June 27, 1950 to Chairman Murray pointed out that the bill contained five specific safeguards for the merit system.[17]

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[16] The Senate Subcommittee on Federal Manpower Policies has recommended elimination of statutory ratios. See statement by Senator Olin D. Johnston, *Congressional Record* (Daily), Vol. 98, p. 9656 (July 5, 1952).

[17] H. Rept. No. 2698, 81st Cong., 2nd Sess., 1950.

Then began a round of amendments. Arthur S. Flemming, speaking for the Citizens Committee for the Hoover Report and drawing on his experience both as a former Civil Service Commissioner and as a member of the Hoover Commission, proposed that sec. 3 (a) be changed to read "It shall be the duty and responsibility of the Commission *and the departments* to maintain . . ." [italics added] thus substituting co-equal authority for the sole responsibility of the Commission. The Commission countered with an amendment stating that "It shall be the duty and responsibility of the Commission, *with the assistance of each department,* to maintain . . ." [italics added] and this version was adopted in the bill reported out by the House Committee on July 20, 1950. No further action was taken in the 81st Congress.

The issue was revived before the Senate Committee in the first session of the 82nd Congress, when the version proposed by the Citizens Committee was included in S. 1135, a modification of the Federal Personnel Recruitment bill. A final solution was then agreed to by the Commission and the Citizens Committee: "It shall be the duty and responsibility of the Commission *and the departments under regulations of the Commission* to maintain . . ." [Italics added]. As the Senate report stated, this version "makes it clear that the Civil Service Commission will continue to have primary responsibility for protection of the merit system."[18] The bill passed the Senate in the hectic final week of the first session; its passage was generally considered a "fluke."

Hearings on S. 1135 were conducted by the House Committee during the second session of the 82nd Congress. As indicated below, the major veteran and employee groups consistently opposed the measure. The House Committee ordered a print of the bill striking out sections 8 and 9, which contained the provisions on the "rule of 5" and category ratings, but the bill died in committee at the end of the 82nd Congress.

Space does not permit discussion of other skirmishes in the battle of amendments. Attention is called, however, to one significant feature proposed by the Commission, agreed to by the Citizens Committee, and incorporated as section 6 (d) in the version of S. 1135 passed by the Senate. This provided that whenever the Commission performed additional examining work as a result of withdrawing examining authority from an agency found to be violating standards, the Commission would be reimbursed from the funds of the agency concerned upon approval of the Bureau of the Budget. The final version of S. 1135, therefore, left no doubt that the Commission would still be "in the driver's seat" and represented a considerable change from the original Hoover Commission position.

Although no change has occurred in basic legislation, further decentralization of examining operations to boards of examiners has continued under the spur of the Korean emergency. The number of boards has increased to some 825 and they can hold examinations for many additional types of jobs. Early in 1951 the Commission reported that it had delegated a greater degree of authority, on a national scale, to boards of examiners than in World War II.[19] The board system proved so effective in maintaining the competitive system of examinations in the field service under emergency conditions that in November, 1951 the Commission urged agencies to establish boards of examiners at agency headquarters in Washington. Thus, while opposing the transfer of primary examining authority to the agencies, the Commission sponsored the actual devolvement of examining work to agency officials, who serve as part-time members of examining boards under the Commission's supervision. The present plan is not too different from that contemplated by S. 1135 so far as the sharing of examining work between the Commission and the agencies is concerned. The essential difference lies in the intangible element of responsibility. Today, with the Commission bearing the major responsibility, an operating official may mistakenly feel that it is legitimate for him to seek loopholes in the civil service system. Under S. 1135 the agency head as well as the Commission would have a direct legal responsibility for upholding the merit system.

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[18] S. Rept. No. 956, 82nd Cong., 1st Sess., p. 2 (1951).

*Category Ratings.* Building on the experience of the TVA, the Hoover Commission recommended a new system for grading and selecting competitors in civil-service examinations. Instead of a numerical scale with the traditional "rule of three," a scale of categories such as "outstanding," "well-qualified," "qualified," and "unqualified" would be used. Appointing officers would be given free choice within the highest category, except that veterans would be considered ahead of non-veterans.

This recommendation also has had a stormy history. Veterans' groups and employee unions consistently and bitterly opposed it. Opposition has centered on the very latitude that the Hoover Commission sought. The adverse arguments were succinctly stated by Luther C. Steward, long-time president of the National Federation of Federal Employees:

> I would say that it would be a very obtuse operating official who could not with the aid of someone at his right hand versed in personnel administration procedure run a coach and four through your category certification and appoint just exactly what individual he pleased.[20]

In its letter to the President, the Civil Service Commission conceded that agency officials needed greater latitude in selection for high-level positions and possibly some other positions, but objected to the use of category rating for *all* positions. It made a counterproposal that the rule of three be continued for most routine lower grade jobs, with a rule of five for more complex jobs in the middle grades, and category ratings for high level positions and any other positions prescribed by the Commission.[21]

S. 2111 (81st Congress—1st session) presented the category method in its undiluted form: that is, applicable to all positions. The history of later bills is the progressive weakening of the principle under the attack of its opponents.

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[19] *The U. S. Civil Service Commission and the Defense Emergency—An Informal Progress Report from the Chairman,* duplicated, 13 pp. (January, 1951).

[20] *Hearings before Subcommittees of the Committee on Post Office and Civil Service,* U. S. Senate, on S. 1135, S. 1148, and S. 1160, August 30, September 5 and 12, 1951, p. 46.

[21] See also the Commission's *66th Annual Report* (1949), p. 5.

H. R. 8925 (81st Congress—2nd session) embodied the Commission's idea of a three-step plan: rule of three, rule of five, and category rating. The bill gave the Commission full authority to prescribe the jobs for which category rating would be used, and the Commission's favorable report on the bill made it clear that due caution would be used by limiting the method at first to a "relatively few specialized positions." Significantly, the postal field service was singled out in the bill as being confined to the rule of three. The Citizens Committee proposed an amendment which would require the use of category ratings for "professional, administrative, and scientific positions of a high level," except in unusual circumstances. The Commission agreed to this amendment, and it was embodied in the bill as reported out by the House Committee. When S. 1135 was introduced in the 82nd Congress, it contained the same wording. In the meantime, however, discussions had taken place between representatives of the Commission and veterans groups. With the hope of enlisting veteran support, the Commission proposed that category rating not be applied to administrative positions. Therefore, in the bill as finally passed by the Senate, category rating was authorized only for "such scientific and professional positions as the Commission may designate."

Failure to obtain legislative authority for category rating, even in diluted form, may be attributed chiefly to a suspicion on the part of veterans' representatives that the proposal was a device to by-pass veteran preference provisions. Disputes arose as to whether a veteran obtained a greater or lesser amount of preference under category rating than under traditional numerical rating with its addition of 5 and 10 points for veteran preference. The problem cannot be solved arithmetically; the two methods are wholly different and defy easy comparisons.

In the writer's opinion, there is no reason to despair of good selection practices in the absence of category ratings. After all, the British civil-service has built a rather respectable reputation on the foundation of the rule of one. Better examining devices, coupled with greater participation by administrators in the examining process, may provide one answer to this problem pending a more fundamental legislative solution.[22]

*Veterans' Placement System*. The Hoover Commission recommended establishment of a nation-wide recruiting system to place veterans in federal positions through selected government agencies. While general agreement was expressed with the objectives of this recommendation, it found little specific support in the legislative or executive branch or even among the veterans' groups, despite the fact, as indicated by Lewis B. Sims, that the Hoover Commission staff discussed it with representatives of the major veterans' organizations and the Commission.[23]

S. 2111 contained a section authorizing "Veterans' Civil Service Counseling and Placement Facilities." This section was not included in H. R. 8925, but reappeared in the original version of S. 1135. It was later stricken by the Senate Committee.[24] One reason why no action has been taken to date may be that 60% of all male federal employees are now entitled to veteran preference, a rather conclusive indication that the existing appointment system does place veterans in federal jobs.

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[22] See Robert Ramspeck, "Administrative Flexibility in the Federal Civil Service," *Public Administration Review*, Vol. 12, pp. 234–41 (Autumn, 1952), for examples of effective selection procedures within the present legal framework.

[23] "The Hoover Commission: A Symposium," AMERICAN POLITICAL SCIENCE REVIEW, Vol. 43, p. 992 (Oct., 1949).

*Recruitment of Junior Personnel.* While the Hoover Commission recognized that some progress had been made in recruiting competent juniors, it recommended that far more emphasis be placed on attracting first-rate young men and women into professional, scientific, technical, and administrative posts. Its concern on this score was understandable. Before World War II the Junior Civil Service Examiner examination, initiated by Leonard D. White, and later the Junior Professional Assistant examinations, had achieved some degree of success. Emergency hiring practices in World War II, however, meant that many of the young persons recruited during wartime had to be released in postwar reductions. Furthermore, young men were not generally available to compete during the war expansion. The postwar examinations for junior personnel failed to maintain the high reputation of their predecessors. In the administrative field a special examination was conducted under the title of Junior Administrative Technician. The examining plan provided only for a general abilities test, with no oral examination. Though thousands passed the examination, the agencies formed a poor opinion of the quality of the candidates and few appointments resulted.

A drastic change in this examining plan was underway at the time of the Hoover Commission study. In 1948 the Committee on Administrative Personnel, an advisory group to the Civil Service Commission under the chairmanship of Emery E. Olson, had recommended that a new examination be tried with the title of Junior Management Assistant. The Committee urged that the written test measure knowledge and ability in the field of administration and that oral examinations be required. Under the guidance of an interagency committee of expert examiners, the JMA was initiated in the fall of 1948 and the first appointees entered on duty in June, 1949. The examination has been repeated annually with a growing degree of success. Typically some ten or twelve thousand persons have taken the written test, of whom only about five hundred have passed. Almost every successful candidate has had one or more offers of permanent federal employment, usually in an agency having an administrative intership program.[25] The success of the JMA examination owes much to the fact that agency users of the register have a voice in the examining plan.

A never-ending discussion goes on regarding the academic requirements for the JMA examination. Originally designed to admit persons with specific training in business and public administration and political science, the examination was changed in 1951 to admit persons trained in any of the social sciences. The answer to the problem would seem to be in long-range research regarding the relative success in federal work of recruits with differing backgrounds.[26]

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[24] S. Rept. No. 956, 82nd Cong., 1st Sess., p. 10 (1951).

[25] See Albert J. Schaffer, "The 1952 Model of JMA," *Personnel Administration*, Vol. 15, pp. 19–22 (Sept., 1952).

The internship programs now underway in a number of federal agencies represent a most encouraging development.[27] They insure that new recruits receive a careful introduction to their work and are not forgotten in some obscure cubbyhole. Thus these programs help to avoid the danger cited by Commissioner James K. Pollock that "Public servants conditioned to be clerks during their whole formative experience may be expected to remain clerks even when great responsibilities are thrust upon them."[28] The internships of the National Institute of Public Affairs led the way for the current federal programs. The fields of engineering and public health as well as administrative work are now included. Although both the JMA and the internship programs began before the Hoover Commission's report was published, the report unquestionably furnished an impetus and was influential in winning acceptance for the programs from top federal officials.

*A Comprehensive Pay Policy for the Executive Branch.* The Hoover Commission proposed comprehensive pay legislation governing the entire executive branch under which the Congress would limit its participation in pay matters to setting maximum and minimum pay rates. Subject to the President's approval, the Civil Service Commission would set detailed pay scales within these legal limits and would issue standards for agency job evaluation plans. Actual pay-fixing for individual employees would be done by the agencies under the Commission's standards.

These pay recommendations were endorsed by the Civil Service Commission, which pointed out that:

> At present a variety of different and in many instances conflicting pay policies and authorities exist which result in inequality and inconsistency of employee treatment. The organization for the control of pay administration is incomplete and cumbersome. No single law prescribes and no single agency has the responsibility and authority to establish, develop and coordinate government-wide policies and standards governing pay administration.[29]

The Federal Personnel Council also endorsed the recommendations. They were incorporated in the Federal Personnel Policy bills of the 81st Congress (section

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[26] Not so well known as the JMA, possibly, are the professional and scientific examinations under such titles as Junior Social Science Analyst, Junior Agricultural Assistant, Junior Physicist, Junior Engineer, etc. These attract thousands of applicants annually and provide an entrance into the career service for hundreds of able persons. Particularly in engineering and the physical sciences, the federal service has taken the lead in employing college students during summer vacations as a means of arousing their interest in a government career.

[27] See U. S. Civil Service Commission Pamphlet 30, *Junior Management Assistant Programs in the Federal Civil Service* and Pamphlet 46, *Guide for Internship Training in the Federal Service* (including bibliography).

[28] *Personnel Management,* p. 56.

[29] Report of July 29, 1949 to Chairman, Senate Committee on Post Office and Civil Service, on S. 2111.

4 of S. 2111 and H. R. 5181). The pay issues, however, received relatively little attention in the furore over recruitment policies. The pay section was not carried over into the various personnel bills of the 82nd Congress.

The chaotic federal pay structure was improved somewhat by the Classification Act of 1949, which brought within its coverage customs and immigration inspectors, previously paid under different statutes, the employees of certain agencies whose pay had been established by administrative action of the agencies concerned, and some positions previously covered by specific law. Today, however, the two-and-a-half million federal employees are still paid under many different systems and a comprehensive pay policy remains to be achieved.

The Hoover Commission's influence did help to bring about delegation of pay-fixing authority to agencies for the single largest group of federal positions governed by one pay statute: the Classification Act group. The Classification Act of 1923, covering most "white collar" federal employees outside of the Postal Field Service and the Foreign Service, set detailed salary scales on a nation-wide basis. The law required a highly centralized type of operation for covered positions in headquarters offices in Washington, since prior approval of the Civil Service Commission had to be obtained before a new position could be classified. (In the field service, agency heads had authority to classify positions subject to the pay schedules in the act.) For several years the Commission had recommended that the act be re-written to grant classification authority to agencies for all covered positions.[30] With the added backing of the Hoover Commission report, a completely revised law was enacted as the Classification Act of 1949. The new act represents the "standards-post audit" approach to the problem of achieving delegated action in a widespread organization under central guidance and control. The Commission publishes detailed standards describing the various series and classes of positions under the act. Each agency head is responsible for applying these standards in classifying the covered positions in his own agency (except those in the three highest grades). From time to time the Commission's representatives review the classification actions taken in the agencies. The Commission has full power to act on appeals, to correct improper classifications, and even to withdraw classification authority in whole or in part if the findings justify such action.

Thus for more than one million positions under the Classification Act, the Hoover Commission's recommendation for delegation of authority from the Civil Service Commission to agency heads is now in operation, although the various pay steps between the maximum and the minimum are still prescribed by law. The centralized postal pay system has not been affected, nor, at the opposite extreme, has the individual authority of agency heads to fix "blue collar" wage rates without centralized coordination or control.

*National Pay Rates versus Locality or Industry Differentials.* With regard to postal, clerical, subprofessional, and "blue collar" workers, the Hoover Commission recommended that pay be fixed according to differentials existing in private business for different localities, areas, or industries. This recommendation recognized the substantial differences between industrial pay levels in most rural areas and in large metropolitan centers. Federal blue collar workers are now paid according to local prevailing rates as determined by each agency head, usually on the basis of data collected by agency wage boards from private employers in the area. The other groups of federal workers mentioned by the Hoover Commission are paid under nation-wide scales set by Congress.

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[30] See *64th Annual Report* (1947), pp. 1–4.

The Civil Service Commission agreed with the objectives of this recommendation but pointed to a number of administrative difficulties. No coordinating machinery existed for setting locality pay rates for the 600,000 federal blue collar workers on the rolls in 1949. The Commission was reluctant to see the principle extended to some 1,200,000 additional workers before the existing problem was solved. In addition, the relationship of locality rates in the lower grades to national rates in the middle and higher grades would cause difficulties. In a small town there might be a large gap between the highest locality rate and the lowest national rate, while in metropolitan areas the locality rates might overlap the national rates. "It appears to us," the Commission stated, "that this question has not been thoroughly thought through."[31] To help overcome these difficulties in high-pay areas, the Commission suggested that it be authorized to set entrance pay levels for Classification Act grades at one of the steps above the minimum whenever necessary to obtain a sufficient number of qualified employees in the area. An annual review would be made to see whether the increased rate should be maintained or adjusted. The Commission recommended this plan as a part of the Classification Act of 1949 but the proposal failed of adoption. It is still carried as an item in the Commission's legislative program.[32]

Provisions in line with the Hoover Commission proposals were incorporated in the Federal Personnel Policy bills of the 81st Congress, but were not carried forward into the personnel bills of the next Congress. The Commission, however, has recommended legislation to remove some 70,000 positions from the Classification Act and place them under agency wage-board authority. These are the blue-collar positions in the present crafts, protective, and custodial schedule, such as maintenance workers on government projects.[33] In the meantime, some administrative progress is being made in coordinating the wage boards which fix the pay of federal blue-collar workers, who now number more than 850,000 under the defense expansion. The Department of Defense is coordinating the periodic wage surveys of the three military departments so that a joint survey will be made in each labor market and private employers will not be asked to provide data three times. While this represents progress, it does not answer the basic problem, since the actual wage rates are not yet coordinated or made consistent for all three military departments.

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[31] Letter to Senate Committee on Expenditures of July 25, 1949.

[32] *68th Annual Report* (1951), pp. 6–7.

[33] *68th Annual Report* (1951), p. 8.

*Increased Salaries for Higher Grade Positions.* Pointing out that pay rates in the lower grades had increased more proportionately than rates in the higher grades, the Hoover Commission urged that the salary ceiling of $10,330 for career employees be raised. It also recommended increases for legislative and judicial salaries and for presidential appointees. This recommendation found ready acceptance, and quick action followed for executive branch positions. Public Law 359, 81st Congress, fixed an increased salary schedule for 229 top positions in the executive branch, such as heads of departments and agencies and their assistants and members of boards and commissions. Previous annual salaries for these appointive posts, ranging from $10,000 to $15,000, were superseded by new rates ranging from $14,000 to $22,500. Increases for the top career posts were provided by the Classification Act of 1949. Three new "supergrades" were added to the previous ceiling of CAF-15 ($10,330), and the number of positions in the new grades was prescribed by law. Three hundred were allowed in GS-16 (now $12,000 to $12,800), 75 in GS-17 (now $13,000 to $13,800), and 25 in GS-18 (now $14,800). Positions can be classified in grades GS-16 and 17 only by action of the Civil Service Commission, and in GS-18 only after approval of the President upon recommendation of the Commission. The defense expansion caused an inevitable increase in the number of supergrade positions. Various laws granted agencies additional positions in these grades outside of the quota of 400, until today 934 in all are authorized. The Commission has recommended that the number of supergrade positions be increased through elimination of the existing quota or through a broad authorization of additional positions.

The Hoover Commission mentioned no figure as a desirable maximum salary for career positions, but the personnel task force report recommended $15,000 as the top career salary. The present $14,800 career maximum (GS-18) does not fall too far below this amount, although lower living costs in 1949 made the $15,000 figure more attractive than it is today. There is still a serious gap between the percentage increases in the higher grades and those in the lower grades, as may be seen by comparing entrance salaries. The present GS-1 salary of $2500 is 98 per cent greater than the prewar figure of $1260 for CAF-1. Before the war CAF-15 carried a salary of $8,000, which has now been increased only 35 per cent to the present $10,800 salary for GS-15. If, however, CAF-15 is compared with GS-18, now the top grade, the increase represents 85 per cent.

*Rewards to Administrators Who Reduce Payrolls.* As part of its proposed new pay system, the Hoover Commission recommended that administrators and supervisors be rewarded for reducing the payroll. This recommendation was readily agreed to and was incorporated in the Classification Act of 1949 as Title X. Under regulations of the Budget Bureau, each department makes periodic reviews of its various activities to determine efficiency of operations and to identify supervisors and employees whose efforts have caused their units to be outstanding. Cash awards are authorized for such supervisors and employees through an efficiency-awards committee in each department. This authorization is in addition to the salary step-increases for superior accomplishment under Title VII of the Classification Act and the cash awards under P. L. 600, 79th Congress (60 *Stat.* 806). Here we have too much of a good thing. An administrator is confronted by three methods for rewarding efficiency, and administrative responsibility for the programs is divided between the Bureau and the Commission. The Subcommittee on Federal Manpower Policies of the Senate Committee on Post Office and Civil Service has recommended a new bill merging the three awards authorizations into one statute, with the Commission responsible for issuing regulations and encouraging agencies to carry out effective programs.[34]

*Promotion Programs.* Dissatisfied with the lack of systematic promotion programs in the federal service, the Hoover Commission recommended that the President require all agencies to work out promotion programs.

In 1938, in an attempt to solve this problem, Executive Order 7916 required agencies to establish promotion systems, and the Civil Service Commission urged the use of competitive promotion examinations. A start had barely been made when the defense program prior to World War II ended the experiment. Nevertheless some agencies continued their efforts to develop systematic promotion plans. A few held occasional written promotion tests, announced to all employees. Others posted vacancy notices on bulletin boards and invited qualified employees to apply at the personnel office. In other cases the qualifications of employees were coded on punch cards so that the names of all having the required qualifications could be quickly ascertained by placement officers. In all too many agencies, however, promotions were made within narrow units, or on the basis of personal acquaintance or the chance spotting of a likely prospect.

The Hoover Commission recommendation served to expedite a study which was then underway in the Civil Service Commission. A plan was discussed with employee unions and the Federal Personnel Council and was issued in May, 1950. Each agency in the competitive service was required to establish a systematic promotion program after consultation with employees. Seven principles were established by the Commission, but no attempt was made to prescribe the details of screening methods or selection procedures. The chief effort was to insure systematic consideration of qualified employees in broad areas of selection. In fact, one of the principles was that "Attention shall also be given to the qualifications of individuals outside of the agency who might be available, in order to insure that the best qualified persons will be selected according to merit." Significantly, the concept of seniority was not even mentioned. Most agencies have announced promotion programs, and these are subject to review during the Commission's regular inspections. A frequent criticism made by the inspectors is that competition for promotion is confined to too narrow an organizational area. The Commission has recently issued a handbook for agency use giving examples of the best practices found in the federal service.[35]

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[34] S. Rept. No. 2101, *Incentive Awards Program in the Federal Government,* 82nd Cong.. 2nd Sess., 1952.

[35] *Building Better Promotion Programs* (Personnel Management Series No. 2) July, 1952.

The selection of employees for their first supervisory jobs is a particularly crucial phase of the promotion process. Mere length of service or technical competence is not enough; potential supervisory ability is the key. In recent years the Navy Department and the Commission have worked out a competitive plan for selecting blue-collar supervisors in the naval shipyards in which workers are ranked according to ratings on a written supervisory judgment test and evaluations by their superiors. The results seem to indicate that leadership factors can be successfully weighed.

*Development of an Administrative Corps.* The Hoover Commission recommended that the Civil Service Commission be required to identify the jobs which could be appropriately classified as administrative. This recommendation merely hinted at the real problem, which was stated more explicitly in the fourth finding of the Commission's *General Management* report:

> The Federal Government has not taken aggressive steps to build a corps of administrators of the highest level of ability with an interest in the program of the Government as a whole.[36]

Although no formal administrative corps exists today, progress has been made in recent years in developing able administrative personnel. Some former interns of the National Institute of Public Affairs have attained the highest career ranks in the years since 1934, and those coming through the Civil Service Commission's internship programs, beginning in 1944, are well started up the ladder. The annual intake of JMA's, reaching five or six hundred a year, promises well for the decades ahead. Typically the young people who have entered the service through these varied programs have sought their own opportunities across bureau and departmental lines. Many have worked in three or more agencies and on the way have acquired the interest in the government program as a whole that the Hoover Commission stressed.

A striking development of postwar years is the growing federal interest in executive development. Here private business took the lead. James V. Forrestal, while Secretary of Defense, requested the Navy Department to make a study of the leading industrial programs. The report exercised a great influence among federal administrators.[37] The need for rotational training and a broad outlook is especially acute in the federal service because of the high degree of specialization. The Civil Service Commission was made aware of this problem several years ago while exploring the possibility of an executive-development program. It found its own qualification requirements for administrative jobs to be a serious barrier to the plan. In 1949 the Commission proposed a program to the Federal Personnel Council to encourage rotational assignments among the various administrative specialties. The original proposal was limited to employees already in some phase of administrative work. At the Council's suggestion the program was broadened to include specialists outside of the administrative field. Thus an engineer, a chemist, or a forester, for example, who has shown leadership ability can undergo administrative experience and training with the objective of preparing himself for an administrative post in his professional field.

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[36] *General Management of the Executive Branch,* p. 5.

[37] United States Naval Institute, *Personnel Administration at the Executive Level* (Annapolis, 1948).

The Commission has appointed a Director of Executive Development Programs to assist federal agencies in establishing and conducting executive-development programs, and has completed executive-development agreements with seven departments and agencies.[38] In 1952 the Commission began a career development program to train a selected number of agency employees centrally, in order to bridge the gap between internship programs and higher-level executive development efforts. After six months of work assignments in several agencies and seminars with their fellows from other agencies, trainees return to the job with a broad view of federal administrative problems. Here in a modest way may be the beginnings of the "pool of career administrators" recommended by John J. Corson.[39]

*Transfer Program.* The Hoover Commission recommended that the Civil Service Commission be authorized to develop a program to facilitate transfer of competent career personnel—particularly in the technical, scientific, and executive areas—from one agency to another. The desirability of this proposal was generally recognized, although the Civil Service Commission suggested that it be limited to "grades or classes of positions which represent in one or more agencies a ceiling of opportunity, or 'blind alley.' "[40]

A beginning along the lines of the Hoover Commission proposal was made in 1946 when, at the suggestion of the Federal Personnel Council, the Civil Service Commission organized the Interdepartmental Placement Committee. This committee, composed of the placement officers of some 40 federal agencies, meets once a week to exchange information concerning current vacancies in the higher grades and available career employees. The number of higher level placements is not great, possibly 300 to 400 a year, but to this extent the committee fulfills a need.[41] In 1951 another step towards a systematic plan for transferring career administrators was taken when an examination for "Federal Administrators" was announced. Competition was limited to current federal employees at GS-12 and above regardless of occupational field. Competitors were given a difficult written test in administrative judgment and the higher ranking candidates were referred for consideration to the defense agencies. A number of transfers and promotions have resulted, although the great expansion was over by the time the list was ready. The Commission's Career Service Section has added the records to its referral service for federal administrative personnel.

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[38] See James C. Stephens, "Navy Develops Its Civilian Executives," *Public Personnel Review*, Vol. 13, pp. 161–66 (Oct., 1952).

[39] In *Executives for the Federal Service* (New York, 1952) pp. 78–86. For an excellent discussion of federal administrative personnel, see also Paul T. David, "The Development and Recruitment of Administrative Leadership in National and International Programs," *America's Manpower Crisis*, ed. Robert A. Walker (Chicago, 1952) pp. 137–67. A group of executives, called together by a Federal Personnel Council committee, is now studying methods of improving the selection, training, mobility, and retention of executives throughout the federal service.

[40] *66th Annual Report* (1949), p. 8.

[41] See Clyde C. Hall and Harold H. Leich, "The Human Touch in Civil Service Placement," *Public Administration Review*, Vol. 12, pp. 178–80 (Summer, 1952).

not well received tho

*Employee Training*. The Hoover Commission recommended enactment of legislation which would clearly set forth the policy of the federal government on the conduct of training programs for civilian employees. This recommendation pointed to the need for clarification of legal authorization for employee training. Some agencies over the years have succeeded in establishing well organized training programs with full legislative approval: for example, the FBI, the Foreign Service, and the military departments. Because of unfavorable decisions of the Comptroller General in the past, many agencies have hesitated to carry on organized training in the absence of specific legislative authority. There has been a feeling in the executive branch that Congress might not be sympathetic to the expenditure of funds for training. Actually there are indications to the contrary in both houses of Congress. The Rees report of the House Post Office and Civil Service Committee on federal personnel activities supported the expenditure of personnel office funds for legitimate training.[42] The Senate Subcommittee on Federal Manpower Policies has likewise endorsed the need for strengthened training programs.[43]

Any doubts about employee training that exist in the legislative branch may reflect a feeling that some federal agencies have "gone overboard" in establishing elaborate and unnecessary programs. Members of Congress are particularly suspicious of attempts to hire untrained clerks and give them stenographic and typing training at government expense.[44] It is clear that Congress does not favor official training in basic skills which applicants can reasonably be expected to acquire at their own expense before presenting themselves for employment. This is far removed from legitimate types of in-service training; for example, training in matters peculiar to government employment, such as customs regulations.

The Hoover Commission's recommendation was embodied in S. 2111 and H. R. 5181 as section 11, the wording of which represented several years of work by the Council's Training Committee. The section would have authorized agencies to conduct training programs themselves and to send employees to educational institutions, research laboratories, etc., for training. The Commission would have been authorized to carry on research and establish a clearinghouse and reference service on training materials. The section was not included in the Federal Personnel Recruitment bills, but a revised version was proposed by the Commission and introduced by Senator Olin D. Johnston in the second session of the 82nd Congress as S. 2987. Representative Katharine St. George introduced a slightly modified version as H. R. 8013. No action was taken on these bills. Late in the session Senator Johnston, as Chairman of the Subcommittee on Federal Manpower Policies, reintroduced the Commission's version as S. 3494 with tighter restrictions and a parallel section governing the training of military personnel.

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[42] H. Rept. No. 2198, 80th Cong., 2nd Sess., 1948.

[43] See Chairman Johnston's statement, *Congressional Record* (Daily), Vol. 98, pp. 9653–9656 (July 5, 1952).

[44] Section 610 of Public Law 488, 82nd Congress, is aimed at this type of training.

Today the Commission is resuming its active interest in the training field that was interrupted in 1946 by the termination of its Personnel Management Advisory Service because of lack of funds. Recently, at the Council's request, the Commission started a modest training reference service to gather examples of agency training materials for use by training officials.

*Employee Participation in Determining Personnel Policies.*—The Hoover Commission recommended that the President require the heads of agencies to provide for employee participation in formulating personnel policies. Although this recommendation did not require legislative action, it was included as section 8 (d) in the Federal Personnel Policy bills. The Civil Service Commission expressed sympathy with the idea, but advised against the adoption of a mandatory rule on the subject.[45] Bills introduced by Representative George M. Rhodes provided that an administrator would be required to consult with union representatives at their request under penalty of suspension or dismissal for failure to do so.[46] The Commission objected to the punitive provisions and suggested that no legislation was necessary, since the goals could be achieved by administrative action.

Some steps have been taken in the executive branch since publication of the Hoover Commission report. Agencies such as TVA and Bonneville Power Administration had previously established well developed plans for union-management consultations.[47] Other agencies have recently worked out plans for dealing with unions or for direct consultation with employees. In 1952, the Navy Department announced a plan for systematic consultation with union representatives on all important personnel policies. The Commission occasionally holds informal discussions with heads of the leading employee unions on major policy issues affecting federal employment.

For some years the Commission has required agencies to consult with employees on specified personnel policies. The standards for approval of agency grievance procedures, first published in 1941, require that both supervisors and employees shall have an opportunity to participate in developing the procedures. In at least one case formal approval of an agency's plan was withheld until this was done. The standards for agency promotion plans, published in 1950, contain a similar provision. The guides for agency personnel operations require agencies to provide for "consideration of employee views in the formulation and adjustment of policies that affect him as a worker."[48]

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[45] *66th Annual Report* (1949), p. 9.

[46] H.R. 3702 (81st Congress) and H.R. 554 (82nd Congress). See *Hearings before the House Committee on Post Office and Civil Service . . . on H.R. 554 and H.R. 571*, 82nd Cong., 2nd Sess., 1952.

[47] Harry L. Case, "Cornerstones of Personnel Administration in TVA," *Personnel Administration*, Vol. 11, pp. 10–12 (Jan., 1949). See also U. S. Congress, Joint Committee on Labor-Management Relations, *Labor Management Relations in TVA* (Senate Report 372, 81st Congress).

*Performance Ratings.* The Hoover Commission urged simplification of the existing efficiency rating system and recommended that it be used solely for developing a better understanding between supervisors and employees rather than for salary increases, lay-offs, and dismissals. In its own way this recommendation was as drastic as the one regarding category rating, since efficiency ratings had traditionally been used in federal, state, and local merit systems as a means of administering rewards and punishments. The Civil Service Commission itself had become dissatisfied with the uniform rating system then in use, and had decided to try to make ratings more realistic. For two years the Commission had conducted a pilot study of a new performance rating plan in its own organization. The actual duties of the job, instead of uniform government-wide elements such as "industry" and "dependability," were used as rating elements.[49]

S. 2111 contained a section on "Appraisals of Performance" (section 9). In reporting to the Senate Committee on this bill, the Civil Service Commission endorsed the Hoover Commission's stand with one important difference: it recommended that *no* evaluation system be required by law. Its memorandum to the President of March 23, 1949 stated: "The opportunity to discover that efficiency ratings may be advantageous to management and employees is too frequently lost in the surge of resentment against being compelled to do something that is not apparently necessary."

The new Classification Act required the Commission to study the rating problem and submit recommendations to the Congress by February 1, 1950.[50] The Commission's recommendations were along the general lines of the Hoover Commission's proposals with the difference noted above. Emphasis was placed on the purpose of performance evaluation rather than on the mechanics of rating. The Commission urged flexibility of rating systems rather than government-wide uniformity. Periodic conferences between employees and supervisors should be encouraged in order to achieve mutual understanding of performance requirements. Ratings should not be used as the sole basis of personnel actions. The Commission's report contained a draft of legislation which was introduced by Representative Tom Murray, Chairman of the House Committee, as H. R. 7264 on February 13, 1950. Shortly thereafter Chairman Murray introduced a new bill, H. R. 7824, representing a compromise between the Commission's draft and the existing system. The Commission, while preferring its own draft, accepted and endorsed the new bill with minor reservations.[51] This was passed as the Performance Rating Act of 1950 (64 *Stat.* 1098).

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[48] *Federal Personnel Manual,* p. A4-4. It is interesting to note that over the past two years employee consultation has received more attention from the Federal Personnel Council than any other subject. Two comprehensive reports have resulted, "Guide for Employee Participation in Agency Management" and "Guide for Effective Relationships with Organized Employee Groups."

[49] See "Standards of Performance—A Symposium," *Personnel Administration,* Vol. 10, pp. 21–46, 51 (July, 1948).

[50] Title IX, later repealed. The Commission's report was published by the Senate Committee on Post Office and Civil Service as an unnumbered Committee print.

The new system differs somewhat from the recommendations of the Hoover Commission and the Civil Service Commission but aims at the same broad objectives. Ratings are still geared to certain personnel actions: extra retention credit for those rated "Outstanding," automatic pay increase within certain time periods for those rated at least "Satisfactory," and removal or reassignment for those rated "Unsatisfactory." Each agency is required to have a rating system and each agency's plan must be approved by the Commission, but great latitude is allowed in the details. An appeals system is still required. At the same time, the act gives recognition to the Hoover Commission recommendation in providing that employees shall be informed of proper performance requirements and in emphasizing the strengthening of supervisor-employee relations. Appeals have decreased greatly in number, and attention seems to have shifted from the search of the past decades for the perfect rating form.

*Reduction in Force.* In accordance with its fresh approach to other traditional civil-service practices, the Hoover Commission recommended a complete transformation of federal lay-off policies. It urged that emphasis be placed on determining which employees should be retained for continuing work, rather than on determining which should be eliminated under a rigid formula. To this end, employees would be ranked in quality categories similar to those recommended for category rating in entrance examinations. Some extra credit would be provided for seniority and military service, but the primary factor would be the employee's qualifications for the remaining work.

The Federal Personnel Council and the Civil Service Commission disagreed with the Commission's recommendations. The former approved the views of two study committees, which challenged the idea that the efficiency of the service would be promoted by deciding retention primarily according to fitness for the remaining work. The committees pointed out that a career service must give reasonable security in an employee's later years if the government is to hold him during his earlier and more productive period.[52] The Civil Service Commission based its objections on the administrative difficulties involved:

> The Commission agrees that existing reduction-in-force requirements should be modified, but feels that the proposal made in the report is too cumbersome to be practicable. The rating of each individual in a large unit where only a few are to be separated is expensive and unnecessary.[53]

CSC views

The recommendations ~~have not resulted in~~ legislative action. They were included in section 12 of the Federal Personnel Policy bills, and numerous other bills have been introduced embodying various formulas to solve the reduction-in-force problem.[54] The chief issue in recent years has been between the veterans' groups and employee unions as to the relative weights to be given military preference and seniority. The veterans' organizations have shown determined opposition to any change in section 12 of the Veterans' Preference Act of 1944.[55] This section requires that due effect in reductions in force be given to "tenure of employment, military preference, length of service, and efficiency ratings," with a proviso that veterans be given absolute priority within a tenure group regardless of length of service.

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[51] Report to Chairman Murray of May 19, 1950.

[52] Federal Personnel Council, *op. cit.*, p. 12.

[53] *66th Annual Report* (1949), p. 10.

The Hoover Commission's personnel task force focused attention on the administrative complexity involved in the numerous reassignments resulting from a reduction in force.[56] The problem has been intensified by the fine distinctions in tenure applied under emergency procedures since Korea; in some cases four or five reassignments have resulted from the abolishment of a single position. To alleviate this problem the Commission recently announced a plan to restrict reassignment rights to permanent employees.[57]

*Special Consideration for Laid-Off Employees.* The Hoover Commission recommended that career employees who are laid off be given top priority for any vacancies for which the Civil Service Commission considers them qualified, and that while awaiting placement they remain on the payroll for three months. Since 1946 priority consideration for "displaced career employees" has actually been required. At that time the Council and the Commission worked out a plan for referring such employees to other agencies. In fact, at one time the plan provided for displacing war-service employees with career employees who had been laid off in other agencies. As might be expected, agencies frequently objected that trained war-service employees had to be released to make room for less competent career workers. Expanding employment in the Korean emergency temporarily solved the problem.[58]

No action has been taken to continue the pay of federal employees who are laid off in reductions in force. Several bills to grant severance pay under these conditions have been introduced but not acted upon.[59]

*Dismissals for Inefficiency.* The Hoover Commission recommended a more workable method for separating inefficient employees. The report outlined a procedure requiring the supervisor to present the facts regarding an employee's alleged incompetence through the director of personnel to the under secretary. A designated official would then investigate the case. If the employee were a probationer he would be dismissed without appeal if the facts justified it. An employee who had completed probation would be given a letter of charges and provided a hearing. If the charges were sustained, he would be dismissed at the end of 30 days, within which he could appeal to the Civil Service Commission. If the Commission accepted his appeal, he would remain on the payroll until the final decision.

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[54] See *Hearings before Subcommittee of the Committee on Post Office and Civil Service . . . on S. 660,* U. S. Senate, 81st Cong., 1st Sess., 1949; and *Hearings before the Committee on Post Office and Civil Service . . . on H.R. 2446,* U. S. House, 81st Cong., 1st Sess., 1949. Bills in the 82nd Congress include S. 455, H.R. 373, and H.R. 3700.

[55] 58 *Stat.* 387.

[56] Task Force Report, p. 68.

[57] See Commission's press release of December 19, 1952.

[58] See James E. Drury, Inter-University Case Series No. 10, *The Displaced Career Employee Program* (New York, 1952) for a detailed discussion of the program.

[59] For example, S. 3477 and H.R. 511 in the 82nd Congress.

The report stated that this procedure would speed removal action. As the Federal Personnel Council pointed out, however, the plan did not represent a simplification of existing procedures.[60] In many departments it would have required a recentralization of removal powers which have long been delegated to subordinate operating officials. Probationers, both veterans and nonveterans, now can be removed without hearing or appeal by a simple letter stating their shortcomings, and no review by headquarters authority is required by civil-service regulations. Nonveterans, representing 53 per cent of the whole service, today have no appeal rights to the Civil Service Commission on the merits of their cases. Even among veterans, only a small proportion of those who are discharged for cause now appeal to the Commission. The proposed procedure would offer the chance of a cash bonus to any employee who appealed to the Commission, since if his case were accepted for hearing he would continue on the payroll until the final decision, whether favorable or unfavorable to him.

The Commission expressed general agreement with the recommendations, but felt that nonveterans should not be given appeal rights outside their agencies.[61] The Council took the same view. Section 8 of the Federal Personnel Policy bills included the major points of the recommendations without the detailed procedural steps. In May, 1952 Chairman Murray of the House Committee on Post Office and Civil Service introduced H. R. 7845 to grant nonveterans approximately the same appeal rights to the Commission that veterans already have. Hearings were conducted (unpublished), but no action resulted.

Three steps have been taken by the Commission to speed removal of incompetents. (1) In July, 1950 the three Commissioners signed a circular to all agency heads urging them to take prompt removal action when necessary and to eliminate successive layers of hearings.[62] (2) In January, 1952 the Commission issued instructions requiring federal supervisors to make written appraisals of the performance of each probationer after ten months of service, to insure that incompetents do not slip into the permanent force by default.[63] (3) Recently, the Commission reviewed its own procedure for hearing appeals of veterans who were removed by agencies, and announced a simplified procedure which provides for only one hearing in the average case.[64] Previously it was fairly common for cases to be heard in a regional office and later in Washington.

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[60] Federal Personnel Council, *op. cit.*, p. 13.

[61] *66th Annual Report* (1949), p. 10.

[62] Departmental Circular No. 634. The Veterans Administration recently completed a thorough review of its internal appeals system and instituted a combined hearing plan in place of several separate hearings.

[63] *Federal Personnel Manual,* p. S2-17. This plan followed the general lines of a recommendation in the Task Force Report (p. 72).

[64] Press release of November 13, 1952.

As in any large organization, removals for inefficiency in the federal service will always present a problem, and there is no simple answer. Discharges for all reasons (aside from lay-offs) now occur at the rate of about 24,000 a year, thus demonstrating the falsity of the popular myth that "You can't fire a government worker." A sample survey by the Commission in July, 1950 showed that of 2,287 removals under charges, 827 or 36 per cent were for inefficiency. The next largest categories were abuse of leave (24 per cent) and crime or fraud related to work (9 per cent).[65] Despite these statistics, many administrators remain convinced that present removal procedures are too cumbersome.[66] The problem for the future is to find a method that will insure prompt removal of the unfit while preserving reasonable safeguards against arbitrary action.

*Better Working Relationships.* Although the efficiency-rating recommendations touched on the desirability of better relationships between employees and supervisors, the Hoover Commission majority report did not make a major point of the matter. Commissioner Pollock was more specific. Under the heading "A Modern Concept of Personnel Administration" he deplored the emphasis on personnel techniques and urged a deeper study of human motivation:

> . . . The employee must be made to feel that he belongs in the organization, that he is creatively, not passively participating, and that he is contributing to its total effort. . . .
>
> In terms of modern management, this means that we must develop a personnel program which has more concern with people than with procedures; which gives more attention to motivation, incentives, and morale than to the refinements of written examinations, pay plans, and service ratings.[67]

These comments were generally overlooked in the debate over more controversial issues. Nevertheless, the concept of developing better working relationships is spreading in the federal service. The work of industrial concerns and universities in the field of human relations is reflected in numerous employee handbooks and supervisory training manuals published by federal agencies.[68] Much recent research in this field was done under Navy grants to universities and became readily available to civilian personnel officials.[69] The various management societies in Washington also have stressed this topic in their discussions. In fact, the movement has gained such momentum in American life that at least one critic has felt the need to administer an antidote.[70]

*Conclusion.* The story of the first four years of the Hoover personnel report is one of mixed failure and achievement. The most far-reaching legislative proposals have not yet been attained: those providing for further decentralization of recruitment, category ratings, training authority, comprehensive pay legislation, and a revised reduction-in-force system. Many of the recommendations requiring administrative action are partially in effect, or at least some action has been initiated. Here the critic can point to failures of quality or scope, but not to total inaction. Not all observers would agree with the statement of the Senate Committee on Expenditures in the Executive Departments in 1950 that "The record of the entire Federal structure with respect to the Hoover Commission report in personnel management is remarkably good."[71] Nevertheless, the Hoover Commission already deserves high rank among the major study groups that have speeded the progress of personnel management in the federal service.

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[65] *68th Annual Report* (1951), p. 44.

[66] For example, see Bernard L. Gladieux, "Civil Service Versus Merit," *Public Administration Review*, Vol. 12, pp. 173–77 (Summer, 1952).

[67] *Personnel Management*, pp. 51–52.

[68] For example, U. S. Department of the Army, *Introduction to Supervision; a Plan for Training Inexperienced Supervisors* (Washington, 1952) (Civilian Personnel Pamphlet No. 41-A).

[69] Harold S. Guetzkow, *Groups, Leadership and Men; Research in Human Relations* (Pittsburgh, 1951). See also Rensis Likert, "Motivational Dimensions of Administration" in *America's Manpower Crisis*, pp. 89–117, Public Administration Service (Chicago, 1952).

[70] William H. Whyte, Jr., "Groupthink," *Fortune*, Vol. 45, pp. 114–117, 142, 146 (March, 1952).

Since 1949 those who believe that federal recruitment should be centrally operated have gathered considerable ammunition from allegations of sales of federal offices and other abuses of merit principles. They can charge that current standards of political morality indicate that a restrictive central merit system is as badly needed as it was in 1883. Perhaps the truth lies in an intermediate position. Many federal agencies have demonstrated complete faith in merit principles, while others have shown themselves susceptible to personal or political pressures. If the law were sufficiently flexible, the Civil Service Commission could recognize this disparity in the degree of surveillance that it exercised. It could apply the traditional type of merit system to the laggards, and to the leaders it could grant the latitude recommended by a majority of the Hoover Commission. Possibly to a few outstanding agencies it might even grant the responsibility and freedom for experimentation urged by Commissioner Pollock.

The 83rd Congress and the new administration may be expected to scrutinize carefully the remaining personnel recommendations in the Hoover Commission report. Much work has already been done by the Senate Subcommittee on Federal Manpower Policies, by Temple University, and by the Rockefeller Committee. Even if the unfulfilled recommendations of the Commission were put into effect, however, the federal personnel structure still would not represent the best of all possible worlds. Some matters the Commission overlooked; for example, the need for intensive personnel research on selection methods and on ways to increase output on the job. And in recent years many new problems have crowded to the front, such as the loyalty and security issue, the need for better personnel practices affecting many thousands of employees serving overseas, the problem of reconciling the civil-service retirement and social-security systems, and the need for an appointment system which can adjust itself to expansions and contractions of the service without a paroxysm of executive orders and regulation-writing. These will warrant as careful study as the unfinished business of the Hoover Commission report.

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[71] S. Rept. No. 2581, *Actions on Hoover Commission Reports.* 81st Cong., 2nd Sess., 1950.

# CONSTITUTIONAL LAW IN 1951–1952

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The 1951 Term of the Supreme Court,[1] during which there was no change in its makeup, continued to exhibit the behavior pattern of the previous Term, both in the mechanics of operation[2] and the drift of decision. The work of the Truman Court is a compound of new Justices and the shifting concatenation of historical forces. It operates amidst the strains and tensions of the Cold War. The leading cases of this Term, dealing with such subjects as presidential seizure of private property, the treatment of aliens, by-products of the trials of Communists, and the pressure on civil liberties generally, all reflect the push of current history.

The total number of dispositions during the 1951 Term, 1207, was almost the same as the number for the 1950 Term, which was 1202. There were only 83 signed opinions, as compared with 98 in the 1950 Term and 87 in the 1949 Term. Twenty-five years ago the number of signed opinions averaged around 200 per Term. The reduction in the number of signed opinions was matched by a growing number of dispositions on the merits by memorandum order. The Court disposed of 200 cases on the merits; 101 came up by appeal (in about equal numbers from the federal district courts and the state courts) and 99 reached the Court on certiorari (72 from the federal Courts of Appeals, 24 from state courts, and 2 from the Court of Claims). The Court continued to keep a tight rein on its discretionary jurisdiction.[3] On the appellate docket it denied certiorari in 511 cases, dismissed 9 petitions, and granted 93 (15.2%). On the miscellaneous docket it denied 382, dismissed five, and granted 19 (4.7%). Some choices, as always, are difficult to explain, for the Court agreed to review some cases of minor importance,[4] and denied certiorari in seemingly important litigation.[5]

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[1] Several books in the public law field which were published during the period under review are worth noting: Fred V. Cahill, Jr., *Judicial Legislation* (New York, 1952); Irving Dilliard, ed., *The Spirit of Liberty—Papers and Addresses of Learned Hand* (New York, 1952); Elizabeth Kelley Bauer, *Commentaries on the Constitution, 1790–1860* (New York, 1952); Franklin A. Smith, *Judicial Review of Legislation in New York, 1906–1938* (New York, 1952). Other titles on specialized subjects are cited later. For sketches of former Justices see: Alpheus T. Mason, "Harlan Fiske Stone and FDR's Court Plan," *Yale Law Journal*, Vol. 61, pp. 791–817 (1952); Thomas Reed Powell, "Charles Evans Hughes," *Political Science Quarterly*, Vol. 67, pp. 161–72 (1952); Martin B. Hickman, "Mr. Justice Holmes: A Reappraisal," *Western Political Quarterly*, Vol. 5, pp. 66–83 (1952); Lester E. Mosher, "Mr. Justice Rutledge's Philosophy of the Commerce Clause," *New York University Law Review*, Vol. 27, pp. 218–47 (1952).

[2] See Robert H. Jackson, "Advocacy before the Supreme Court," *Cornell Law Quarterly*, Vol. 37, pp. 1–16 (1951).

[3] Fowler V. Harper and A. S. Rosenthal, "What the Supreme Court Did Not Do in the 1949 Term—An Appraisal of Certiorari," *University of Pennsylvania Law Review*, Vol. 99, pp. 293–325 (1950); Harper and Edwin D. Etherington, "What the Supreme Court Did Not Do in the 1950 Term," *ibid.*, Vol. 100, pp. 354–409 (1951).

In addition to the denials of certiorari, it should be noted that 50 appeals were dismissed, 37 for want of a substantial federal question. Since the Court must pass judgment on the question of substantiality, its so-called compulsory jurisdiction has a strong element of discretion in it. The only difference between a dismissal of an appeal for lack of a substantial federal question and a denial of a petition for certiorari is that in the latter case no reason is ordinarily given, whereas in the former the Court must at least assert the absence, in its judgment, of a substantial issue.

During the 1951 Term 104 cases were disposed of with full opinion, with 90 opinions being written, of which seven were *per curiam*. Of these cases, 24 (27%) commanded unanimous votes, and there were one or more dissents in 66 (73%). Seventy-nine cases were disposed of on the merits by memorandum order, 52 (66%) with unanimous votes, and 27 (34%) with dissents. In all, 73 dissenting opinions were filed; Justice Black wrote 16, Justice Douglas 15, Justice Frankfurter 14, and Justice Jackson 9; on the other hand, Chief Justice Vinson and Justice Burton each prepared only three dissenting opinions, and Justice Clark none at all. In all cases decided on the merits, whether with full opinion or by memorandum order, Justice Black dissented in 50, Justice Douglas in 43, Justice Reed in 29, and at the other extreme, Chief Justice Vinson dissented 15 times, Justice Minton 14 times, and Justice Clark only once. There were in all 211 dissenting votes. In addition, there were 19 concurring opinions, Justices Douglas, Frankfurter and Jackson each filing four, and the Chief Justice and Justice Minton none. In six cases the decisions below were affirmed by an equally-divided Court.

In connection with memorandum orders denying certiorari or dealing with miscellaneous applications, Justice Black dissented 19 times and Justice Douglas 12 times; on the other hand, Justice Jackson dissented three times, and Justices Clark and Reed only once each. In addition, Justice Frankfurter filed three "memoranda," his view being that while it is impossible for the Justices to give reasons in writing for refusing certiorari, it is occasionally appropriate to explain the issues at stake in litigation where the Court refused to exercise its review powers. When the Court voted to grant certiorari in the steel seizure case,[6] Justices Burton and Frankfurter did the unusual thing of recording their dissents.

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[4] *E.g.*, *United States v. Kelly*, 342 U.S. 193 (1952); *Bruner v. United States*, 343 U.S. 112 (1952).

[5] *E.g.*, *Remington v. United States*, 343 U.S. 907 (1952) (propriety of the government's withholding from the defendant knowledge of the fact that the foreman of the grand jury was the financial and literary collaborator of the chief prosecution witness in a book-publishing venture the success of which required a true bill); *Koehler v. United States*, 342 U.S. 852 (1951) (how federal judges should instruct juries in cases involving criminal prosecutions for violation of federally-guaranteed rights); *Land v. Dollar*, certiorari denied, 340 U.S. 884 (1950), motion for leave to ask for reconsideration of the denial continued on the docket, 343 U.S. 973 (1952). The case was finally settled out of court in June, 1952. See Note, "The Dollar Litigation: A Study in Sovereign Immunity," *Harvard Law Review*, Vol. 65, pp. 466–78 (1952).

While the vote of four Justices is sufficient to grant certiorari, it is possible for a bare majority of five to dismiss the petition after argument without deciding the controversy on its merits. Justice Frankfurter maintained, in *United States v. Shannon*,[7] that since it then appeared that certiorari had been improvidently granted, the case being unique and not presenting a problem of general importance, the Court should not hesitate to correct the original mistake by dismissing the writ. In another case decided the same day, Justice Frankfurter insisted that the writ should be dismissed as improvidently granted, with the result that since the Court was otherwise evenly divided, the judgment of the court below was affirmed.[8] Thus no opinion was written to dispose of a case that four Justices had voted to hear. In the *Shannon* case Justice Douglas sharply disagreed with Justice Frankfurter's view. He declared:

> A Justice who has voted to deny the writ of certiorari is in no position after argument to vote to dismiss the writ as improvidently granted. Only those who have voted to grant the writ have that privilege. The reason strikes deep. If after the writ is granted or after argument, those who voted to deny certiorari vote to dismiss the writ as improvidently granted, the integrity of our certiorari jurisdiction is impaired. By long practice—announced to the Congress and well-known to this Bar—it takes four votes out of a Court of nine to grant a petition for certiorari. If four can grant and the opposing five dismiss, then the four cannot get a decision of the case on the merits. The integrity of the four-vote rule on certiorari would then be impaired.

On the other hand, it still remains true that after four Justices have voted to grant certiorari, argument is presented to the whole Court on the merits of the case in the light of its record. The will of the four who favored granting certiorari, therefore, is not altogether frustrated.[9]

## I. QUESTIONS OF NATIONAL POWER

### 1. SEPARATION OF POWERS: THE PRESIDENT'S AUTHORITY

*Youngstown Sheet & Tube Co. v. Sawyer*,[10] decided on June 2, 1952, was by all odds the most elaborately-argued and discussed case of the Term.[11] Not since the *Myers* case,[12] of a quarter a century ago, has the Court come to grips with such a fundamental aspect of the boundaries of presidential power. This litigation dealt with the question of the President's power to seize private property at a time of alleged crisis. The seizure came as a climax to a long dispute between the steel companies and their employees. On December 18, 1951, the Union gave notice of its intention to strike on December 31. Following the intervention and failure of the Federal Mediation and Conciliation Service, the President referred the dispute, on December 22, to the Federal Wage Stabilization Board. In other words, the President chose to act under the Defense Production Act of 1950 rather than the Taft-Hartley Act. The Board's report did not bring about a settlement, and on April 4, 1952, the Union gave notice of a nation-wide strike, to begin April 9. Believing that steel production was indispensable and that a stoppage would jeopardize national defense, the President ordered Secretary of Commerce Sawyer, a few hours before the strike was to begin, to take possession of and operate most of the steel mills. The following day the President sent a message to Congress reporting his action, and twelve days later he sent a second message. Congress took no action.

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[6] *Sawyer v. Youngstown Sheet & Tube Co.*, 343 U.S. 937 (1952).

[7] 342 U.S. 288 (1952).

[8] *United States v. Jordan*, 342 U.S. 911 (1952).

[9] That the new and more restrictive Rule 27(9) relating to the submission of *amicus* briefs, 338 U.S. 959, is not working to everyone's satisfaction is suggested by Justice Frankfurter's memorandum in *On Lee v. United States*, 343 U.S. 924 (1952). For a discussion of the new rule see Robert L. Stern and Eugene Gressman, *Supreme Court Practice* (Washington, D. C., 1950), pp. 295–97.

[10] 343 U.S. 579.

[11] See Donald R. Richberg, "The Steel Seizure Cases," *Virginia Law Review*, Vol. 38, pp. 713–27 (1952); Lucius Wilmerding, Jr., "The President and the Law," *Political Science Quarterly*, Vol. 67, pp. 321–38 (1952); Arthur M. Williams, Jr., "The Impact of the Steel Seizures upon the Theory of Inherent Sovereign Powers of the Federal Government," *South Carolina Law Quarterly*, Vol. 5, pp. 5–32 (1952); Bernard Schwartz, "Inherent Executive Power and the Steel Seizure Case," *Canadian Bar Review*, Vol. 30, pp. 466–82

On April 30, Judge Pine of the District Court of the District of Columbia issued a preliminary injunction on petition of the steel companies.[13] The Court of Appeals, sitting in banc on the same day, issued a stay.[14] The Supreme Court, to which the United States immediately petitioned for review, granted certiorari on May 3.[15] Thus the Court of Appeals did not review the case at all. This falls within the terms of the jurisdictional statute which provides that certiorari lies to review cases in the Courts of Appeals "before or after rendition of judgment or decree."[16] In other words, the Supreme Court need only wait for the case to reach the Court of Appeals, though it very rarely takes the case before the Court of Appeals has made its decision.[17] Justices Burton and Frankfurter voted to deny certiorari, the former filing a statement protesting the bypassing of the Court of Appeals. He maintained that the issues were such as to require all the wisdom the judicial process makes available, and that it was more important to have a sound result than a quick one. But the Court majority was in a hurry. Oral argument was set for May 12, and the decision was announced on June 2. Where there is a will, there is a way.

The Supreme Court sustained the District Court by a six-to-three vote. Justice Black delivered the opinion of the Court, but each of the Justices who concurred with him, Frankfurter, Douglas, Jackson and Burton, filed his own

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(1952); Jay W. Murphy, "Some Observations on the Steel Decision," *Alabama Law Review*, Vol. 4, pp. 214–31 (1952).

[12] *Myers v. United States*, 272 U.S. 52 (1926).

[13] 103 F. Supp. 569.

[14] 197 F. 2d 582.

[15] *Sawyer v. Youngstown Sheet & Tube Co.*, 343 U.S. 937 (1952).

[16] 28 U.S.C.A. §1254(1).

[17] This happened, for example, in *United States v. United Mine Workers*, 330 U.S. 258 (1947).

opinion. Justice Clark concurred separately in the judgment of the Court but not in its opinion. The views of the dissenters, Vinson, Reed and Minton, were set forth by the Chief Justice in a long and vigorous opinion. All in all, these seven opinions contain a vast amount of material on the office of the chief executive. Since everyone agreed that Congress could authorize seizure under its eminent domain power, the case turned on the inferences to be drawn from the legislation already on the books and the nature of the President's constitutional powers. The government rested its case upon a theory of inherent presidential powers to deal with a national emergency. Neither the President nor the Solicitor General relied upon the seizure provisions of the Defense Production Act or of the Selective Service Act of 1948.

Considering the magnitude of the issues, the amount of public interest, and the expansiveness of his colleagues, Justice Black's opinion for the Court was unusually brief, and on the crucial constitutional issue almost peremptory. Apparently his rather general statement was all that a bare majority of the Court would go along with. Justice Black first of all rejected the argument that the injunction should be denied on the non-constitutional grounds of the absence of irreparable damage and the existence of adequate legal remedies for compensation for any possible damages. He doubted whether there would be any right to recover in the Court of Claims, and took the position that seizure was certain to result in damages which it would be difficult if not impossible to measure.[18] He noted that no statute either expressly or impliedly authorized the seizure, and pointed out that before this controversy arose, Congress refused to adopt the seizure technique for settling labor disputes, and specifically rejected an amendment, when the Taft-Hartley Act was under consideration, which would have authorized seizure in cases of emergency. He took this to mean that Congress had its own theory about collective bargaining.

Justice Black proceeded to a consideration of the argument that the aggregate of constitutional powers vested in the President in Article II supports the seizure order. He did not find justification in the President's military powers as commander-in-chief, noting that cases dealing with the broad powers of military commanders in theatres of war were of no concern here. The President as commander-in-chief does not have "the ultimate power as such to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities." Nor was the seizure order justified by the constitutional clauses vesting the executive power in the President. His power is to enforce the laws, not make them; his law-making functions are limited by the Constitution to recommending laws and the veto. The Constitution clearly vests the lawmaking power in Congress. And while Congress undoubtedly has the power to authorize the taking of private property for public use, and can regulate labor-employer relationships, "the Constitution did not subject this law-making power of Congress to presidential or military supervision or control."

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[18] The government's position on these points of equity law was not mere declamation. See Paul A. Freund, "The Year of the Steel Case," *Harvard Law Review*, Vol. 66, pp. 89–95 (1952).

Justice Black rather summarily dismissed the argument that other Presidents have without congressional authority taken possession of private business enterprises to settle labor disputes. Even if this is true, he maintained, Congress has not thereby lost its exclusive constitutional authority to make all necessary and proper laws. He concluded: "The Founders of this Nation entrusted the lawmaking power to the Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand."

In his incisive opinion, Justice Jackson discussed the scope of presidential power in three different situations. First, when the President acts pursuant to congressional authorization, his authority is at a maximum. Secondly, in the absence of a congressional grant or denial, there may be an independent presidential responsibility. Thirdly, when the President acts contrary to the expressed or implied will of Congress, his power is at its lowest ebb. In this case Congress has neither authorized this sort of seizure nor has it been silent on the subject, for it embodied its policy in several statutes. Turning to the Article II considerations, he noted that the executive powers of the President are enumerated, not given in blanket form, and that the President is commander-in-chief of the army and the navy, not of the country, its industries and inhabitants. Even assuming that we are at war, he was unwilling to believe that this alone empowered the President to seize industries, for the power to raise and support armies is vested in Congress. Finally, he considered the appeal to inherent emergency powers dangerous, and not warranted by any provision of the Constitution. He cited the example of Germany to illustrate the dangers involved, and called attention to the fact that in both France and Great Britain emergency executive powers always rest upon legislation. Describing how potent the presidential office has already become, Justice Jackson refused to believe that it would suffer if the Court declined further to aggrandize it.

Justice Burton wrote: "The controlling fact here is that Congress, within its constitutionally delegated power, has prescribed for the President specific procedures, exclusive of seizure, for his use in meeting the present type of emergency. Congress has reserved to itself the right to determine where and when to authorize the seizure of property in meeting such an emergency." As for the inherent constitutional power of the President, Justice Burton said that this situation was not comparable to imminent invasion or threatened attack, and took the position that the order in question was not the military command of the commander-in-chief to a mobilized nation waging a war or imminently threatened with war.

Justice Clark agreed that where Congress has laid down specific procedures to deal with the type of crisis confronting the President, the latter must follow them; but in the absence of such action by Congress, he thought the President had an independent power to act which "depends upon the gravity of the situation confronting the nation." He also expressed the opinion that the President could have acted under the seizure provision of the Selective Service Act of 1948, but chose not to do so. No other Justice agreed on this last point.

The presence of emergency conditions, Justice Douglas argued, does not transfer the legislative power to the President. Conceding that the Executive can move more swiftly, Justice Douglas developed the thought that the separation of powers principle was not designed to promote efficiency, but rather to preclude the exercise of arbitrary power. Furthermore, he pointed out that the seizure of property is a taking in a constitutional sense, and therefore carries with it a duty to pay. This is a congressional prerogative, for the President cannot raise revenue.

Reviewing the problem in historical perspective, Justice Frankfurter concluded that every time Congress has authorized executive seizure (16 times since 1916), it has carefully circumscribed the grant of power, by fixing time limits and describing detailed conditions, with special attention to the question of compensation. Here Congress has not given the President any such power. Nor did he believe that seizure power was derived from the constitutional grant of the power faithfully to execute the laws. There were three cases of seizure without statutory authority in the period from June to December, 1941, but this did not add up, in his view, to a long-continued practice which established a construction of the Constitution.

In his dissenting opinion, Chief Justice Vinson began by describing in considerable detail the state of our international relations, including the Korean War, the Truman Doctrine, the Marshall Plan, the North Atlantic Treaty, and the threat of Russian military power. He then summarized the large body of implementing legislation which Congress has enacted to carry out our international responsibilities, the appropriation since June, 1950, of $130 billions for defense and military assistance, the Mutual Security, Selective Service and Defense Production Acts, and others. The President, he insisted, has the duty of executing all these legislative programs, and their success depends upon continued production of steel and stabilized prices for steel. Reciting the great constitutional powers of the President, he reasoned that it was "apparent that the Presidency was deliberately fashioned as an office of power and independence." While the President is not an autocrat, neither is he an automaton, impotent to act at a time when the Republic's survival is at stake.

The Chief Justice reviewed rather discursively and uncritically the history of executive action, with or without statutory authorization, in times of national emergencies, ranging from President Washington's intervention in the Whiskey Rebellion to President Truman's decision to send troops to Korea. His conclusion was that "Presidents have taken prompt action to enforce the laws and protect the country whether or not Congress happened to provide in advance for the particular method of execution." In this instance President Truman had acted to carry forward two legislative programs, military procurement and price stabilization. Thus he was executing the laws. Unlike an administrative agency or a subordinate official, the President is a constitutional officer taking care that a mass of legislation is executed. Flexibility of execution to meet critical situations is a matter of practical necessity. The Chief Justice emphasized the gravity of the emergency, and argued that in times of great peril the Executive must not be weak. He accused the majority of holding a "messenger-boy concept" of the office of President. "Presidents have been in the past, and any man worthy of the Office should be in the future, free to take at least interim action necessary to execute legislative programs essential to survival of the Nation." Finally, he stressed throughout that the seizure was temporary, that the President reported promptly to Congress, and that the seizure was subject to approval, or disapproval, or change, by Congress, whenever it chose to act.

### 2. FEDERAL RIGHTS

*Right to Privacy.* Whether a public transportation utility may inflict commercial radio programs upon its "captive" audiences was the interesting question litigated in *Public Utilities Commission of the District of Columbia v. Pollak.*[19] The Capital Transit Company, which operates the street railway and bus system of Washington, D. C., installed "music as you ride" radio programs, consisting of about 90% music, 5% news, weather reports and matters of civic interest, and 5% commercial advertising. The Company took a poll of its passengers and reported that 92% favored continuance of the programs. The Utilities Commission of the District ordered an investigation, after protests were made, and concluded that these radio programs did not interfere with public convenience, comfort or safety. On the appeal of several passengers, the Court of Appeals held that objecting passengers were deprived of liberty without due process, insofar as commercials and announcements were concerned.[20] The Supreme Court reversed.

Speaking for the Court, Justice Burton agreed that while the First and Fifth Amendments restrict only the federal government and not private parties, there was a sufficiently close relationship between the government and this radio service to bring the matter within the scope of the Bill of Rights. The Company had a substantial monopoly as a public utility under an authorization by Congress, and operated under the regulatory supervision of a federal agency. It was concluded that there was no violation of the First Amendment, first, because the testimony did not show any substantial interference with the passengers' freedom of conversation, and secondly, because there was no substance to the claim that the programs had been used for disseminating objectionable propaganda. The assertion that the due process right of privacy was invaded was also rejected on the ground that the Fifth Amendment does not secure to each passenger on a public vehicle regulated by the federal government a right of privacy substantially equal to the privacy one is entitled to in his own home. When one rides in a public conveyance, Justice Burton asserted, the right of privacy is "substantially limited by the rights of others." He also stressed the fact that the majority of passengers approved of the programs, and that the Commission had reached its conclusion only after notice, investigation and public hearings.

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[19] 343 U.S. 451 (1952).
[20] 191 F. 2d 450 (1951).

Justice Black concurred on the due process issue, and agreed that music programs do not violate the First Amendment, but he thought otherwise insofar as passengers were subjected to the broadcasting of news, views, public speeches, or propaganda of any kind. Justice Frankfurter took no part in the case, saying that his feelings were "so strongly engaged as a victim of the practice in controversy" he had better not sit in judicial judgment. Justice Douglas dissented, asserting that the practice violated the due process right to privacy, which is "the beginning of all freedom." He thought the passengers were subjected to a form of coercion, since they have no real choice but to ride on the vehicles, and sit and listen. He expressed the fear that once privacy is invaded, it is gone, and while today it is the radio program of a business enterprise, tomorrow it may be a dominant political or religious group which seeks to force its views upon captive audiences.

*Deportation of Aliens.* It is a sign of the times that some of the most significant decisions of the 1951 Term dealt with the treatment of aliens.[21] The leading case was *Harisiades v. Shaughnessy*,[22] where the Court was called upon to decide whether the United States may constitutionally deport a legally resident alien because of a membership in the Communist party which terminated before enactment of the Alien Registration Act of 1940, which authorized such deportation. The three appellants all admitted membership for some periods of time prior to 1940. Each lower court made a finding that the Communist party, during the period of the alien's membership, taught and advocated the overthrow of the government of the United States by force and violence. The Court held that such deportation was not in conflict with the due process clause of the Fifth Amendment. The government, Justice Jackson asserted, has always had the power to terminate its hospitality to aliens, and while the expulsion of aliens long resident here entails hardships, the power to expel them, like the power to exclude, is a weapon of defense and reprisal confirmed by international law as an inherent power of every sovereign state. Whether the congressional policy is harsh or unreasonable is not a question for judges to answer; it is up to the political branches of the government to frame a policy in an area so vitally and intricately connected with the conduct of foreign relations, the war power, and the maintenance of the republican form of government. Justice Jackson pointed out that the present statute was enacted by Congress as a result of the Court's decision in 1939 in the *Kessler* case,[23] wherein it was ruled that the act dealing with the deportation of subversives was intended to reach only those aliens who were members of subversive organizations at the time the proceedings against them were instituted. The Court could not say that the congressional alarm concerning the Communist conspiracy was either a fantasy or a pretense when the bill was passed in 1940.

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[21] See Ellen Raphael Knauff, *The Ellen Knauff Story* (New York, 1952).

[22] 342 U.S. 580 (1952).

[23] *Kessler v. Strecker*, 307 U.S. 22 (1939).

The Court also ruled that the deportation law did not violate the First Amendment, for the Constitution does not prevent Congress from making a distinction between advocacy of change by lawful processes and change by force and violence. Under our Constitution, Justice Jackson pointed out, there is no excuse for a violent attack on the status quo, since there is the legal alternative of the ballot. It is true that it is hard to draw the line, but the problem is not solved by suppressing everything, as the Communists do, or suppressing nothing short of this side of immediate success. Justice Jackson thought that the test was fully discussed in the recent *Dennis* case,[24] and didn't require restatement. Finally he ruled that the statute was not *ex post facto*, because the 1940 Act was actually a continuation of prior legislation dating from 1920; these aliens, therefore, were adequately forewarned. But even if the Act is retroactive, it was argued that the *ex post facto* clause applies only to penal legislation, and deportation, however severe its consequences, has consistently been classified as a civil procedure. As an original proposal Justice Jackson conceded that this might be considered debatable, but he insisted that it was well established in statutory and decisional law.

It was argued that the congressional policy permitted no escape by reformation. Again, said Justice Jackson, the wisdom of a policy of "atonement and redemption" is for Congress and not the judiciary to decide upon. Furthermore, when the Communist party as a matter of strategy formally expelled alien members *en masse*, following the adoption of the 1940 Act, it destroyed any significance that discontinued membership might otherwise have as evidence of a change of heart.

Justice Douglas filed a dissenting opinion in which Justice Black concurred. He noted that the conception of an absolute congressional deportation power was based on the old *Fong Yue Ting* case,[25] and thought this precedent was inconsistent with the philosophy of constitutional law which the Court has since developed for the protection of resident aliens. A resident alien is a person within the meaning of the due process clauses, and is entitled to the basic guarantees of liberty and livelihood. He thought that Justice Brewer's dissenting protest in *Fong Yue Ting* against the doctrine of inherent powers as both indefinite and dangerous had grown in persuasiveness with the passing years. And he insisted that banishment was punishment in the practical sense. He conceded that Congress could deport dangerous aliens, but here aliens were ordered deported not for what they are but for what they once were, thus ruling out "the principle of forgiveness and the doctrine of redemption," which seem in his view to be part of our constitutional law.

Another important case dealing with the deportation of aliens, and decided by a five-to-four vote, was *Carlson v. Landon.*[26] Section 23 of the Internal Security Act of 1950 authorizes the Attorney General to hold alien Communists in custody without bail, at his discretion, pending determination of their deportability. The Court had no doubt of the validity of the statutory provision making Communist membership alone a sufficient ground for deportation, since the doctrines and practices of Communism teach the use of force to achieve political control. Detention, it held, is a necessary part of the deportation procedure, and since not all aliens are necessarily dangerous, the 1950 Act gave the Attorney General discretion to grant or refuse bail. The legislative history, said Justice Reed, supports the government's contention that the Attorney General's discretion is not beyond judicial review, but that it is presumptively correct and unassailable except for abuse. Reviewing the facts of the five aliens involved in this litigation, Justice Reed concluded that since they were all active Communist party members, discretion to refuse bail was properly exercised.

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[24] *Dennis v. United States*, 341 U.S. 494 (1951).

[25] *Fong Yue Ting v. United States*, 149 U.S. 698 (1893).

[26] 342 U.S. 524 (1952).

The crucial question of the relationship of bail to the factor of availability for trial was relegated to a footnote. This was held to be of no great significance in security cases involving alien Communists. Furthermore, Justice Reed observed that the past record of Communists, in failing to show up for trial, was far from decisive against the Attorney General's action. He drew attention to a report filed by the Department of Justice at the request of the Court which showed that in fact a large majority of aliens arrested on warrants of deportation are granted bail. Justice Reed also held that Section 23 did not delegate legislative power unconstitutionally, because of the lack of standards, since in the light of the statute as a whole the Attorney General must have a wide discretion, each exercise of which Congress is not obliged to spell out in detail. Furthermore, the Attorney General's discretion is not untrammelled, since it is subject to judicial review, and the refusal of bail must be justified in terms of the purposes of the statute.

Finally, Justice Reed held that Section 23 did not violate the bail clause of the Eighth Amendment, which, he argued, has not prevented Congress from defining the classes of cases in which bail is not compulsory, as, for example, in criminal cases where the punishment may be death. In other words, the Eighth Amendment does not say that all arrests are bailable.

Justice Black castigated the Court for what he termed a "harsh holding," a decision in "shocking disregard" of the Eighth (bail), First (free speech) and Fifth (due process) Amendments. He stressed the fact that the aliens in question were not denied bail because if released they might try to evade obedience to possible deportation orders, but because they were regarded as security risks. Thus it follows that their imprisonment is unrelated to any question of deportation, and "a power to put in jail because dangerous cannot be derived from a power to deport." If Congress can authorize the imprisonment of dangerous alien Communists, it can authorize it for citizen Communists on the same grounds. Actually the Bureau agent could throw a citizen in jail merely by saying he is an alien. Justice Black also protested against the Attorney General's delegating this tremendous power to subordinates. More fundamentally he insisted that condemning people to jail is a job for the judiciary in accordance with due process which cannot be farmed out to the police and prosecuting attorneys. He maintained that to keep people in jail because of fear of their talk was a flat violation of the First Amendment, which "grants an absolute right to believe in any governmental system, discuss all governmental affairs, and argue for desired changes in the existing order." Finally, he thought the statute as construed violated the Eighth Amendment. He characterized the Court's ruling as a "weird, devitalizing interpretation" which reduces the Amendment to the level of "a pious admonition." For the Court ruled that the Eighth Amendment does not limit Congress, but only the courts.

In his dissenting opinion Justice Frankfurter emphasized that the Attorney General was given "discretion," not the power to decide arbitrarily, and that aliens arrested on warrants of deportation need bail for the same reasons that lead to bail where persons are held on serious criminal charges. He thought that the Attorney General had not in fact exercised discretion, but had made an abstract, class determination. Dissenting briefly, Justice Douglas stated that the expulsion of aliens for past actions or present expressions unaccompanied by conduct was more important than the bail issue. On the other hand, Justice Burton thought the bail issue was crucial, and argued that since the unreasonable denial of bail has the same consequence as excessive bail, the Eighth Amendment should be construed to prohibit unreasonable denial of bail.

Still another case involving the deportation of aliens was *United States v. Spector*,[27] decided by a five-to-three vote. At issue was a section of the Internal Security Act of 1950 providing that any alien against whom a specified order of deportation is outstanding "who shall willfully fail or refuse to depart from the United States within a period of six months from the date of such order of deportation, . . . *or shall willfully fail or refuse to make timely application in good faith for travel or other documents necessary to his departure*," shall be guilty of a felony. (Italics added.) The District Court dismissed an indictment on the ground that the statute was unconstitutionally vague and indefinite.[28] The Supreme Court reversed, Justice Douglas taking the view that the command of the statute was "simple and intelligible." He construed "timely" as meaning within six months, and said that which travel documents were needed depended upon the country the alien chooses to go to.

Justice Black thought the alien was forced to make a series of guesses, as to when an application is "timely," what constitutes a "good faith" application, what kind of "documents" are "necessary" for his departure, and to whom he must apply for them. He observed that "aliens living in this country are not necessarily sophisticated world travelers familiar with the present-day red tape that must be unwound to get from one country to another." Justice Jackson, with whom Justice Frankfurter agreed, maintained that the statute was unconstitutional on its face, within the rule of the *Wong Wing* case,[29] which held that punishment for unlawful residence by an alien cannot be had without a judicial trial. Here the statute does not permit the court which tries the alien for the crime of unlawful residence to pass on the illegality of his presence. Thus the mere production of an administrative order for deportation becomes conclusive evidence of unlawful presence, without the possibility of judicial inquiry into the order's validity. It is true, said Justice Jackson, that the alien has no constitutional protection against administrative deportation, but he stands on an equal footing with the citizen when he is charged with crime. The Court majority had refused to deal with this issue because it hadn't been briefed or argued. Said Justice Jackson: "I abstain from comment on this new squeamishness whereby the Court imprisons itself within counsel's argument." At the very least, he said, the Court could order the case reargued.

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[27] 343 U.S. 169 (1952).

[28] 99 F. Supp. 778 (S.D. Calif. 1951).

[29] *Wong Wing v. United States*, 163 U.S. 228 (1896).

*Alien Property.* An enemy alien's claim to property vested by the Alien Property Custodian had better luck in *Guessefeldt v. McGrath,*[30] decided by a five-to-three vote. The appellant, a German citizen who lived in Hawaii continuously from 1896 to 1938, took his family to Germany for a vacation in 1938 and was kept there involuntarily until 1949. He alleged he had done nothing to aid the enemy's war effort. The Court agreed with his contention that he was not "resident within" Germany within the meaning of the definition of "enemy" in the Trading with the Enemy Act, and that he could therefore sue the Custodian. The debatable point was whether Section 39, forbidding the return of property to any "national" of Germany or Japan, applied to Guessefeldt. Justice Frankfurter held that as a matter of legislative history and purpose, this section did not apply to this party, and that if it did, it would raise "debatable constitutional questions." His theory was that friendly aliens are protected by the Fifth Amendment requirement of just compensation.[31] He agreed that there were contrary views, but insisted that in any event "the constitutional problem is not imaginary." Of course, he did no more than argue the desirability of deciding the case without answering the constitutional question. In his dissent, Chief Justice Vinson said that plainly Guessefeldt was an enemy alien in every ordinary sense of the term, and " 'there is no constitutional prohibition against confiscation of enemy properties.' "[32]

*Denaturalization.* Finally, in *Bindczyck v. Finucane*[33] the Court held that the denaturalization procedure spelled out in the Nationality Act—which requires the United States district attorney to file an affidavit showing good cause, and gives the individual concerned sixty days' personal notice to answer the petition—was the exclusive procedure for revoking citizenship on account of fraudulent or illegal procurement based on evidence outside the record. Bindczyck was naturalized in a Maryland state court in 1943, and then seven days later, at the same term of court, and in accordance with its power under local law to set aside judgments during the term in which they were rendered, the court set aside the order of naturalization on motion of the government. Speaking for a majority of five, Justice Frankfurter pointed out that the denaturalization section of the Nationality Act, adopted in 1906, was the result of a half-century of agitation designed to avoid the evils of haphazard denaturalization.[34] Congress intended to formulate "a self-contained, exclusive procedure," and did not intend to leave the matter to the confused medley of state procedures for setting aside local judgments. For errors on the record, the United States may appeal, in accordance with the rule of the *Tutun* case.[35] For errors outside the record, the statutory denaturalization procedure is provided. Justice Frankfurter rejected the contention that a grant of citizenship is a judgment which, like any judgment, is within the control of the issuing court during the term. "Such abstract reasoning is mechanical jurisprudence in its most glittering form," and disregards both the purpose of the statute and "the capricious and haphazard results that would flow from applying such an empty syllogism to the actualities of judicial administration." The dissenting Justices, Reed and Burton, thought that Congress clearly gave state courts concurrent jurisdiction over the matter, and that as a matter of course the states are free to exercise the grant of power in accordance with their normal procedures, unless specifically forbidden to do so by the federal legislation.

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[30] 342 U.S. 308 (1952).

[31] He relied upon *Russian Volunteer Fleet v. United States*, 282 U.S. 481 (1931); *Ex parte Kawato*, 317 U.S. 69 (1942); *The Venus*, 8 Cranch 253 (1814).

[32] Quoted from *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 11 (1926). He also leaned heavily on *Ludecke v. Watkins*, 335 U.S. 160 (1948) and *Brown v. United States*, 8 Cranch 110 (1814).

[33] 342 U.S. 76 (1951).

*Bail.* While the Court ruled that aliens held for deportation may, in the discretion of the Attorney General, be denied bail altogether, a unanimous Court construed the meaning of the Eighth Amendment's interdiction of "excessive" bail favorably to the petitioners in *Stack v. Boyle.*[36] Twelve persons had been indicted in the federal District Court, Southern District of California, for conspiracy to violate the Smith Act. On arrest, bail was fixed at $50,000 each. The only evidence offered by the government in opposition to a motion to reduce bail was that four persons previously convicted under the Smith Act in the southern district of New York had forfeited bail. After the District Court refused to reduce bail, the petitioners filed applications for writs of habeas corpus in the same court. The writs were denied, the Court of Appeals affirmed, and the Supreme Court granted certiorari. While the holding was that the bail was excessive, the Court ruled that the proper procedure for challenging bail is by motion to reduce, and then appeal to the Court of Appeals from an order denying the motion. Habeas corpus should be withheld where an adequate remedy available in the criminal proceeding has not been exhausted. Therefore, the judgment of the Court of Appeals was vacated, and the case was remanded to the District Court with direction to hold a hearing on the question of excessive bail.

As to the substantive issue, Chief Justice Vinson asserted that since 1789, "federal law has unequivocally provided that a person arrested for a noncapital offense *shall* be admitted to bail. This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. . . . Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning." A defendant must provide bail in order to give adequate assurance that he will stand trial and submit to sentence if convicted. Bail is "excessive" under the Eighth Amendment if the figure is higher than an amount reasonably calculated to fulfil this purpose.[37] This is the directive of the applicable federal rule of criminal procedure.[38] The bail fixed in this case, the Chief Justice noted, was higher than that usually imposed for offenses with like penalties.[39] And it cannot be assumed, without evidence, that each petitioner is a pawn in the hands of a superior. He said: "To infer from the fact of indictment alone a need for bail in an unusually high amount is an arbitrary act. Such conduct would inject into our system of government the very principles of totalitarianism which Congress was seeking to guard against in passing the statute under which petitioners have been indicted." If higher than usual bail is required, it must be supported by evidence brought out in a hearing.

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[34] See John P. Roche, "Pre-Statutory Denaturalization," *Cornell Law Quarterly,* Vol. 35, pp. 120–37 (1949).

[35] *Tutun v. United States,* 270 U.S. 568 (1926).

[36] 342 U.S. 1 (1951).

*Searches and Seizures.* On Lee operated a laundry in Hoboken. Poy, an old acquaintance and former employee, came in to his place of business and engaged him in conversation, during which On Lee made incriminating statements which led to his conviction on an opium charge. He did not know that Poy was an undercover agent for the Bureau of Narcotics, nor did he know that Poy was wired for sound, with a small microphone in his pocket and a small antenna running along his arm. Nor did he know that an agent of the Bureau, Lawrence Lee, was stationed outside with a receiving set. On Lee could be seen through the large front window, and agent Lee could hear the conversation. It was conceded that agent Lee's testimony was prejudicial. A majority of five Justices rejected On Lee's claim that the admission of agent Lee's testimony violated the search and seizure clause of the Fourth Amendment, Section 605 of the Federal Communications Act, and the principles of fair play.[40] Four Justices voted to reverse.

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[37] See Charles E. Desmond, "Bail—Ancient and Modern," *Buffalo Law Review*, Vol. 1, pp. 245–48 (1952).

[38] Rule 46(c). "AMOUNT. If the defendant is admitted to bail, the amount thereof shall be such as in the judgment of the commissioner or court or judge or justice will insure the presence of the defendant, having regard to the nature and circumstances of the offense charged, the weight of the evidence against him, the financial ability of the defendant to give bail and the character of the defendant."

[39] Maximum penalties under the Smith Act are five years in jail and a fine of $10,000.

[40] *On Lee v. United States*, 343 U.S. 747 (1952). See Alan F. Westin, "The Wire-Tapping Problem: An Analysis and a Legislative Proposal," *Columbia Law Review*, Vol. 52, pp. 165–208 (1952); Osmond K. Fraenkel, "The Fourth Amendment and the Federal Courts," *Lawyers Guild Review*, Vol. 12, pp. 73–77 (1952); Leon R. Yankwich, "The Right of Privacy: Its Development, Scope and Limitations," *Notre Dame Lawyer*, Vol. 27, pp. 499–528 (1952); William S. Fairfield and Charles Clift, "The Wiretappers," *The Reporter*, Vol. 7, December 23, 1952, pp. 8–22; Vol. 8, January 6, 1953, pp. 9–20.

For the majority, Justice Jackson held that there had been no unlawful search and seizure because, since Poy entered the place of business with On Lee's consent, if not by an implied invitation, no trespass had been committed. He ruled that Poy's subsequent conduct did not vitiate the consent and render the entry a trespass ab initio.[41] The contention that Poy's entrance was a trespass because consent to enter was obtained by fraud was rejected as a "fine-spun" doctrine, and the suggestion that agent Lee, outside the laundry, was a trespasser "verges on the frivolous." The cases dealing with unlawful seizure of tangible property, Justice Jackson held, do not apply in the field of mechanical or electronic devices, at least where access to the listening post was not obtained by unlawful search. The Court refused to reconsider the *Olmstead* case,[42] which held wiretapping to be outside the ban of the Fourth Amendment. But it would do On Lee no good, said Justice Jackson, even if the *Olmstead* decision were overruled, because there is no analogy between wiretapping and what transpired here. Eavesdropping outside an open window, or use of field glasses to magnify vision, are not forbidden, and they would have no more effect on the petitioner's privacy. Similarly, Section 605 of the Federal Communications Act was not violated because On Lee had no communications facility to be interfered with.

Finally, Justice Jackson rejected the plea that the evidence should be excluded in order to discipline federal law enforcement officers, within the rule of the *McNabb* case.[43] Here neither the agent nor the informer had violated any federal law. Furthermore, the general rule of common law is that otherwise admissible evidence is not rendered inadmissible by the fact of having been obtained illegally, and departure from this rule must be justified by some compelling social policy. "Society," said Justice Jackson, "can ill afford to throw away the evidence produced by the falling out, jealousies, and quarrels of those who live by outwitting the law." In fact, he asserted, the recent trend of the law is in favor of admitting testimony, leaving its weight up to the trier of fact. He did not believe that the government should "be arbitrarily penalized for the low morals of its informers."[44]

Justice Frankfurter thought the majority was adopting the doctrine that the end justifies reprehensible means. He conceded that a criminal prosecution is more than a game, but insisted that it is not a dirty game. He argued that the *Olmstead* decision was a mistake, and should be overruled for the reasons originally given by the four dissenting Justices—Holmes, Brandeis, Butler and Stone—who were not sentimentalists about criminals, "no softies." The Court's rule is a bad one, Justice Frankfurter stated, because it "makes for lazy and not alert law enforcement. It puts a premium on force and fraud, not on imagination and enterprise and professional training."

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[41] He cited *McGuire v. United States*, 273 U.S. 95 (1927) as authority for the proposition that the fiction of trespass ab initio is a rule of liability in civil actions only, and *Zap v. United States*, 328 U.S. 624 (1946), to show that extension of the fiction is not favored.

[42] *Olmstead v. United States*, 277 U.S. 438 (1928). Said Chief Justice Taft: "There was no searching. There was no seizure. The evidence was secured by the use of the sense of hearing and that only. There was no entry. . . ." Justice Holmes said in dissent: " . . . For my part I think it a less evil that some criminals should escape than that the government should play an ignoble part. . . ." Said Justice Brandeis, dissenting also: "Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law. . . ."

[43] *McNabb v. United States*, 318 U.S. 332 (1943). This case held that a confession should be excluded if made during a period of unlawful detention in violation of a federal statute requiring prompt arraignment.

[44] See Richard C. Donnelly, "Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs," *Yale Law Journal*, Vol. 60, pp. 1091–1131 (1951).

A much simpler problem was resolved in *United States v. Jeffers.*[45] Here officers entered the hotel room of the defendant's two aunts, in their absence and his, and without warrant searched the place and seized narcotics claimed by the defendant. The Court ruled that the motion to exclude the evidence should have been granted. The fact that the evidence was not on the defendant's premises did not deprive him of standing to suppress it. The search cannot be separated from the seizure. The Court, said Justice Clark, will not permit "a quibbling distinction to overturn a principle which was designed to protect a fundamental right."

*Illegal Detention.* In the recent *NcNabb* and *Upshaw* cases,[46] the Court laid down the rule that confessions should be excluded if obtained during a period of illegal detention, due to failure to bring the defendant promptly before a committing magistrate. In *United States v. Carignan*[47] the Court declined to extend the rule. Carignan was arrested in Anchorage, Alaska, on an assault charge, on a Friday, and while in lawful custody on that charge was questioned the following Saturday and Monday about a murder. He finally confessed, after being permitted to consult a priest twice. There was no evidence of violence, persistent questioning, denial of food or rest, or promises. The conviction was reversed on another ground, that error was committed when the trial court refused to permit the defendant to testify in the absence of the jury on the question of the voluntariness of the confession. But on the detention issue the Court ruled that, absent coercion, threats or inducements, the Constitution does not forbid police examination in private of those in lawful custody, and that since Carignan was lawfully detained, his case fell outside the reason of the *McNabb* rule, which was to abolish unlawful detention. The exclusion of involuntary confessions, said Justice Reed, gives an accused complete protection, and it would not promote justice to extend a mechanical rule based on the time of a confession. Three concurring Justices agreed that the conviction was properly set aside, but for the reason that the police should not be permitted the practice of arresting a man on one charge in order to investigate a wholly (and usually) different crime. Said Justice Douglas: "The rule of evidence we announce today gives sanction to the police practice which makes detention the means of investigation. Therein lies its vice."

[45] 342 U.S. 48 (1951).

[46] *McNabb v. United States,* 318 U.S. 332 (1943); *Upshaw v. United States,* 335 U.S. 410 (1948).

[47] 342 U.S. 36 (1951).

*Habeas Corpus.* In Section 2255 of the 1948 revision of the Judicial Code, Congress provided that prisoners in custody under sentence of a federal court, claiming the right to be released because of a violation of the Constitution or laws, or because the court lacked jurisdiction, or because the sentence was in excess of the authorized maximum, or is otherwise subject to collateral attack, may move the court which imposed sentence to vacate or correct the sentence. Such a motion for relief may be made at any time, and in its discretion the court may act *ex parte.* The sentencing court is not required to entertain a second motion for similar relief, and appeal lies to the court of appeals. The statute also provides that an application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion shall not be entertained if it appears that the petitioner has failed to seek relief by motion to the sentencing court, unless the remedy by motion is inadequate or ineffective to test the legality of the detention. The Court of Appeals for the Ninth Circuit thought that in precluding resort to habeas corpus Section 2255 unconstitutionally suspended the writ. Since a habeas corpus action must be brought in the district of confinement, two important consequences followed which the new rule sought to correct. First, the habeas corpus hearing had to be held in a court in which the records are not readily available; and secondly, the few district courts in whose jurisdiction the major federal penitentiaries are located were required to handle unusually large numbers of petitions, often far from the scene of the facts, the witnesses and the records. Accordingly, after extensive consideration, the Judicial Conference of the United States recommended the change in procedure, to permit collateral attack on convictions in the sentencing courts. The new remedy is in fact in the nature of the ancient writ of error *coram nobis.* The Court ruled unanimously that there was no impingement upon prisoners' rights of collateral attack upon convictions, and that the sole purpose of Section 2255 was "to minimize the difficulties encountered in habeas corpus hearings by affording the same rights in another and more convenient forum."[48] But actually the Court refused to rule directly on the constitutionality of the statute on the ground that, since the district court had not followed the procedure outlined in the statute, no constitutional question was properly before the Court.

*The Rule of Definiteness.* A federal statute making it a crime for anyone to solicit or receive contributions in consideration of a promise to support or use influence in obtaining for any person "any appointive office or place under the United States" was sustained by a five-to-four vote in a case where the office in question, while authorized by an act of Congress, was not yet in actual existence.[49] The majority thought the statute plainly reached "dealing in futures," as to offices which might "reasonably be expected" to be established, for "it is no less corrupt to sell an office one may never be able to deliver than to sell one he can." This construction does not run afoul of the requirement of definiteness, for "the sale of non-existent but plausible offices" is not likely to entrap the influence merchant. The four dissenters thought the statute applied only to actual existing offices, and stressed that this "reasonably to be expected" office hadn't as yet been set up.

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[48] *United States v. Hayman,* 342 U.S. 205 (1952). See Zechariah Chafee, Jr., "The Most Important Human Right in the Constitution," *Boston University Law Review,* Vol. 32, pp. 143–61 (1952); Rex A. Collings, Jr., "Habeas Corpus for Convicts—Constitutional Right or Legislative Grace?", *California Law Review,* Vol. 40, pp. 335–61 (1952).

[49] *United States v. Hood,* 343 U.S. 148 (1952).

In another case,[50] the Court upheld, by a six-to-three vote, a regulation of the Interstate Commerce Commission which provided that "drivers of motor vehicles transporting any explosive, inflammable liquid, inflammable compressed gas, or poisonous gas shall avoid, *so far as practicable, and, where feasible,* by prearrangement of routes, driving into or through congested thoroughfares, places where crowds are assembled, street car tracks, tunnels, viaducts and dangerous crossings." (Italics added.) The District Court held that the words "so far as practicable, and, where feasible," were too vague and indefinite as a standard of guilt. The Supreme Court disagreed, pointing out that "few words possess the precision of mathematical symbols, most statutes must deal with untold and unforeseen variations in factual situations, and the practical necessities of discharging the business of government inevitably limit the specificity with which legislators can spell out prohibitions. Consequently, no more than a reasonable degree of certainty can be demanded." It was pointed out that in the *Sproles* case[51] Chief Justice Hughes held the term "shortest practicable route" not to be too vague. The Court noted that the I.C.C. rule was the product of a long history of regulation and study in which the trucking industry participated extensively. Finally, attention was drawn to the fact that the statute punished only those who knowingly violate the regulation, which does much to destroy any force in the argument that the statute was unfair.[52] The three dissenters felt that the regulation was unworkable and indefinite—that where Congress delegates the crime-making power to an administrative commission, a considerable precision is required.

*Fair Compensation.* The Alien Property Custodian brought suit to require the Cities Service Company to pay on two debentures; the obligations represented by them had previously been vested under the Trading with the Enemy Act upon a finding that they were owned by a resident and national of Germany. The Custodian never had possession of the debentures. One matured in 1950, but had never been presented for payment, and was last reported to be in Berlin in the hands of the Russians. The other matures in 1969, and was presented in 1950 to Chase National, the indenture trustee, for redemption, and is now in the possession of a New York brokerage house. The Court held that the statute grants the authority to vest obligations evidenced by domestic negotiable bearer debentures, even though the debentures themselves were outside the United States.[53] The Court rejected the fiction that, since the debentures were located outside the country at the time of vesting, the debts did not have a situs within the United States for purposes of seizure. This would provide a sanctuary for enemy investments, defeat the recovery of American securities looted by conquering forces, and restrict the exercise of the war powers of the United States. Since the obligor was in the country, and the obligation can be effectively dealt with through the exercise of jurisdiction over the obligor, Congress transgressed no constitutional limitations.

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[50] *Boyce Motor Lines, Inc. v. United States,* 342 U.S. 337 (1952).

[51] *Sproles v. Binford,* 286 U.S. 374 (1932).

[52] Reliance was had on *Screws v. United States,* 325 U.S. 91 (1945) and related cases.

[53] *Cities Service Co. v. McGrath,* 342 U.S. 330 (1952).

The more serious issue, however, was whether the Act took the Company's property contrary to the Fifth Amendment unless it has a remedy against the United States in case a foreign court holds it liable to a holder in due course of the debentures. It was conceded that the Act discharges the obligor of all liability in any American court, but it owns extensive properties all over the world which subject it to foreign suits. The Court agreed that it was possible that Cities Service might suffer judgment in a foreign country, and in the event of double recovery it would have a right to recoup from the United States for a "taking" of its property without just compensation. Only with this assurance against double liability can it be fairly said that the present seizure is not itself an unconstitutional taking of property. Two Justices thought that the determination of the obligation of the United States, in the event that the Company is required to pay another claimant, should not be made until a second judgment is had.

*Treason.* Kawakita was born in the United States in 1921 of Japanese nationals, and hence was a citizen of both countries. In 1939, shortly before he became 18, he went to Japan for a visit, with an American passport, to obtain which he took the usual oath of allegiance. In 1940 he registered with an American consul in Japan as an American citizen. He remained there, entered a university in 1941, and once more renewed his passport and took the oath. In 1943, he registered in a family census register, and got a job as interpreter with a nickel company. At this time he had his name removed as an alien and changed his address from California to Japan. Later he went to China on a Japanese passport and accepted labor draft papers from the Japanese government. Hired to interpret for prisoners of war working for the nickel company, his treasonable acts consisted in mistreating them. In December, 1945, Kawakita went to the American consul at Yokohama and registered as an American citizen, stating under oath that he was a United States citizen and that he had not done various acts amounting to expatriation. He was issued a passport and returned to the United States. Soon after that he was recognized, arrested, and convicted of treason. The trial judge charged the jury that if Kawakita had lost his American citizenship he must be acquitted, but if he remained an American citizen then he owed the same duty of allegiance as any other citizen, and that even if he was an American citizen, he must be acquitted if he honestly believed that he was no longer a citizen, for in that event he could not have had the necessary treasonable intent. The Supreme Court, by a four-to-three vote, affirmed the conviction.[54]

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[54] *Kawakita v. United States,* 343 U.S. 717 (1952).

The Court held, in the first place, that Kawakita had not expatriated himself, and that since the implications of his acts were ambiguous, it was for the jury to decide. Justice Douglas noted that Kawakita had held no "office, post or employment" under the Japanese government, which would be proof of denaturalization, and that the company he worked for was a private institution organized for profit. The Court also rejected the contention that a person with dual nationality can be guilty of treason only to the country where he resides. Neither the Treason Clause of the Constitution nor the Treason Act of 1790 has a territorial limitation. It is not true that an American citizen living beyond the territorial limits of the United States may not commit treason against the United States. American citizenship, until lost, carries obligations of allegiance as well as privileges and benefits. A person with dual citizenship, who happens to be in the other country when war breaks out, may choose one or the other, but he may also elect to continue his dual citizenship. The dual citizen may owe paramount allegiance to the other country while there, but this does not mean that he therefore owes no allegiance to the United States. Certain acts which are done voluntarily or wilfully might be treasonable, even though they would not be such if done under compulsion of law or the job. Here the jury found that Kawakita had not been forced to commit the traitorous acts. He cannot say that being a citizen of Japan he owed no allegiance to the United States even though he was an American citizen.

The ingredients of treason are adhering to the enemy, giving him aid and comfort. Disloyal thoughts are not enough; there must be proof of overt acts. The jury found Kawakita guilty of eight overt acts; one would have sufficed. Some of the acts consisted in mistreating American prisoners to get more work out of them. Though Kawakita's contribution to the Japanese war effort was minor, yet it was treasonable, the important thing being the nature of the act. The act may even be unnecessary to the success of the enemy, or only abortive. The test is whether it gives aid and comfort to the enemy, at the moment of its performance. The other acts of cruelty to American prisoners were not required by Kawakita's job as interpreter. And it is immaterial that what he did was lawful under Japanese law; the source of the law of treason is the American Constitution. Finally, the Court held that the two-witness rule for each overt act is met even though the witnesses differ in details. While two witnesses must testify to the same act, it isn't necessary that their testimony be identical.

Chief Justice Vinson and Justices Black and Burton dissented because they believed that Kawakita had expatriated himself by virtue of his various activities in Japan, including the heinous treatment of American prisoners of war.

*Discrimination.* While not involving a direct interpretation of the Constitution, *Brotherhood of Railroad Trainmen v. Howard*[55] is worth noting as an additional step forward in the war against discrimination in employment. On threat of a strike, the union, bargaining representative for the brakemen under the Railway Labor Act, forced the Frisco railroad to agree to discharge all colored

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[55] 343 U.S. 768 (1952). See Note, "Duty of Union to Minority Groups in the Bargaining Unit," *Harvard Law Review*, Vol. 65, pp. 490–502 (1952).

"train porters," who actually performed all the duties of white brakemen. The Negroes had their own union. By a six-to-three vote the Court held the agreement to exclude the Negroes from employment illegal, following the rule of the *Steele* case,[56] although in *Steele* the Negroes had no union of their own and the Brotherhood was the exclusive bargaining agent for the entire craft (of firemen). Justice Black ruled that the breach of statutory duty was the same in both cases, the illegality consisting in racial discrimination, which Congress did not authorize. The federal act, said the Justice, prohibits bargaining agents from using their power to destroy the jobs of colored workers in order to give them to white workers. Three Justices dissented on the ground that *Steele* was not controlling because, since the Negroes had their own union in the instant case, the Brotherhood had no duty to contract for them. While neither a state government nor the federal government may discriminate on the ground of race, private parties may, and no applicable federal law says they may not. They asserted that it was up to Congress to write a fair employment practices act, and is not the province of the Court to do so.

*Federal Protection of Civil Rights.* The Court's war of attrition against the surviving remnants of the post-Civil War civil rights acts[57] continued with *Stefanelli v. Minard.*[58] Newark police officers entered petitioner's home without legal authority and seized property dealing with bookmaking. It was not disputed that if federal officers had made this search, they would have violated the Fourth Amendment. Following his indictment, Stefanelli made no move in the state court to suppress the evidence, since under New Jersey law the seized property is admissible. He therefore sued for an injunction in a federal District Court against the use of the evidence on the basis of a federal statute which authorizes any person who is deprived by anyone acting under color of local law of any right or privilege secured by the Constitution and laws of the United States, to sue at law or in equity or in any other proper proceeding. The Court sustained a dismissal of the suit by the trial court. Justice Frankfurter reminded that the recent *Wolf* case[59] held that in a prosecution in a state court for a state crime, the Fourteenth Amendment does not forbid the admission of evidence secured by an unreasonable search and seizure although due process embraces the search and seizure problems.[60] He refused to decide whether the complaint stated a cause of action under the federal statute, because the balance was against a federal court of equity using its discretion in favor of the petitioner. "The maxim that equity will not enjoin a criminal prosecution summarizes centuries of weighty experience in Anglo-American law. It is impressively reinforced when not merely the relations between coordinate courts but between coordinate political authorities are at issue." Federal courts should therefore not interfere piecemeal to try collateral issues arising in pending state criminal cases, there being too much danger of "insupportable disruption."

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[56] *Steele v. L. & N. R. Co.,* 323 U.S. 192 (1944).

[57] Eugene Gressman, "The Unhappy History of Civil Rights Legislation," *Michigan Law Review,* Vol. 50, pp. 1323–58 (1952). See also John Edgar Hoover, "Civil Liberties and Law Enforcement: The Role of the FBI," *Iowa Law Review,* Vol. 37, pp. 175–95 (1952).

[58] 342 U.S. 117 (1951).

[59] *Wolf v. Colorado,* 338 U.S. 25 (1949).

[60] Justice Douglas, dissenting alone, noted that he had dissented, along with Justices Murphy and Rutledge, in the *Wolf* case. He said: "To hold first that the evidence may be admitted and second that its use may not be enjoined is to make the Fourth Amendment an empty and hollow guarantee so far as state prosecutions are concerned."

### 3. THE FEDERAL TAXING POWER

An interesting controversy over federal taxation was resolved by a five-to-four vote of the Court in *Rutkin v. United States*.[61] The issue was whether money obtained by extortion was income taxable to the extortioner. The Internal Revenue Code, Section 22(a), covers "gains or profits and income derived from any source whatever." The jury found that $250,000 which petitioner had received from a former partner was obtained by extortion. In support of his argument that this was not taxable income Rutkin relied upon the recent *Wilcox* case,[62] which held that embezzled funds were not taxable income to the embezzler because he had no rightful claim to the money and was under legal obligation to return it. Speaking for a bare majority of the Court, Justice Burton rather lamely "limited the *Wilcox* case to its facts"; that is to say, he didn't overrule its holding nor did he applaud it. He said merely that embezzling is not extortion, which is technically true, but which ignores the fact that analogy is the life of the law. It is established, he argued, that an unlawful gain, as well as a lawful one, constitutes taxable income when its recipient has such control over it that as a practical matter he derives readily realizable economic value from it. This accords with settled administrative and judicial rule and practice. The original 1913 income tax act, it was pointed out, taxed incomes from any "lawful" business, but in 1916 an amendment deleted the word "lawful" with the obvious intent of taxing unlawful gains as well. The broad language of Section 22(a) shows that Congress intended to exercise its full power to tax income.

The four dissenters thought the *Wilcox* case was controlling, an extortioner having no better claim to his money than an embezzler. Justice Black noted that Justice Burton had dissented in *Wilcox*, and said that actually the Court was now adopting, as a result largely of a change in its personnel, the reasoning which had previously been rejected. Justice Black agreed that income derived from such enterprises as gambling and bootlegging are taxable though illegal, because those so engaged have a bona fide claim to their money. But he insisted that Congress did not intend to treat the sporadic loot of an embezzler or extortioner or robber as belonging to them.

Above all, Justice Black severely criticized this effort on the part of the national government to punish such purely local crimes as embezzlement and extortion. He maintained that this expansion of the federal criminal jurisdiction into fields of law enforcement heretofore left wholly to the state and local communities was unwise for all concerned. Many think it lowers the prestige of the federal system of justice, and tends to make it top-heavy, but above all the United States cannot do its own job properly if it expands into the state criminal law field. This development is also bad for the states because the elements of these offenses and their underlying problems vary from state to state, because it weakens the sense of local responsibility for local conditions, and weakens control by state courts over interpretation of their own state laws. It also imperils the possibility of fair trials because of the danger of double or even triple prosecutions. Finally, such prosecutions are always prejudicial to the defendant, because of the resulting confusion of issues, as in this case, where Rutkin was hardly tried for tax evasion. Of some 900 pages of printed testimony only 13 related to tax questions.

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[61] 343 U.S. 130 (1952).

[62] *Commissioner v. Wilcox*, 327 U.S. 404 (1946).

## 4. THE COMMERCE POWER

While there were quite a number of cases during the 1951 Term in the commerce field, few involved interpretations of the basic constitutional scope of the power of Congress. Perhaps the most interesting was the case of the Lorain *Journal*,[63] in which this Ohio newspaper was enjoined under the Sherman Act because, as the only newspaper in town, it refused to take advertising from anyone who patronized a competing radio station. A unanimous Court found that the conduct complained of was an attempt to monopolize interstate commerce. "There can be little doubt today," said Justice Burton, "that the immediate dissemination of news gathered from throughout the nation or the world by agencies specially organized for that purpose is a part of interstate commerce. . . . The same is true of national advertising originating throughout the nation and offering products for sale on a national scale." The distribution of news and advertising transmitted to Lorain in interstate commerce was regarded as an inseparable part of the flow of interstate commerce. "Without the protection of competition at the outlets of the flow of interstate commerce, the protection of its earlier stages is of little worth."

Similarly, the Court ruled that a company which grants patent licenses embodying price-fixing agreements was in commerce, and subject to the Sherman Act, even though it manufactured nothing, but was merely the owner of the patents, granting the right of making and vending to others.[64] "We think it beyond question," said Justice Reed, "that this making of license contracts for the purpose of regulating distribution and fixing prices of commodities in interstate commerce is subject to the Sherman Act, even though the isolated act of contracting for the licenses is wholly within a single state." In another case the Court held that a power company with its plants on the Susquehanna River in Pennsylvania, which sells to a Baltimore company when the river flow permits and buys from it during periods of low flow, is in interstate commerce and therefore subject to regulation as to rates and service by the Federal Power Commission.[65] The Commission's authority to regulate this commingled flow of power is complete, and does not vary with the rise and fall of the river. The Court also affirmed *per curiam* and without opinion an order of the Interstate Commerce Commission increasing intrastate commuters' fares on the New Haven Railroad to the level of interstate rates.[66] On the other hand, the furnishing of prepaid medical care on a local plane, with no showing that any across-the-state-line activities were adversely affected, and with only a few sporadic and incidental payments to out-of-state doctors and hospitals, was held to be outside the scope of interstate commerce and therefore of the Sherman Act.[67]

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[63] *Lorain Journal Co. v. United States*, 342 U.S. 143 (1951). See Comment, "Local Monopoly in the Daily Newspaper Industry," *Yale Law Journal*, Vol. 61, pp. 948–1009 (1952).

[64] *United States v. New Wrinkle, Inc.*, 342 U.S. 371 (1952).

## 5. FEDERAL JUDICIAL POWER

*Contempt Power.* One of the by-products of the turbulent, marathon trial of the eleven Communist leaders which came to a close in 1951 with the *Dennis* decision[68] was the Court's approval by a six-to-three vote of Judge Medina's sentencing of the lawyers to jail for periods up to six months, after the jury's verdict was in, without giving further notice or a hearing.[69] Certiorari had been limited to the question whether the judge had properly followed the relevant Rule. Rule 42(a) provides that a criminal contempt may be punished summarily if the judge certifies that he saw or heard the conduct constituting the contempt and it was committed in his actual presence. Rule 42(b) states that otherwise criminal contempts shall be prosecuted on notice; reasonable time must be allowed to prepare a defense; the defendant is entitled to trial by jury in any case in which an act of Congress so provides; and if the contempt involves disrespect of the judge, he is disqualified from presiding at the hearing except with the defendant's consent. The lawyers who were held in contempt maintained that Judge Medina could have proceeded summarily if he had acted at once upon the occurrence of each incident; but that since he waited till the end of the trial, punishment would no longer have anything to do with any obstruction of the trial. They maintained that they were entitled to a jury trial before another judge under Rule 42(b).

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[65] *Pennsylvania Water & Power Co. v. Federal Power Commission*, 343 U.S. 414 (1952). Two Justices dissented on the theory that this case should be approached as an antitrust problem, and that by merely regulating, the Commission is actually condoning a violation of the Sherman Act.

[66] *New York v. United States*, 342 U.S. 882 (1951). Justice Douglas dissented on the ground that the ICC hadn't supplied an adequate basis for its decision, since all it did, so he argued, was to make findings that the interstate rates were reasonable, and then fix the intrastate rates at the same level. It made no findings as to what would constitute a fair proportion of the railroad's total income for intrastate traffic; there was no finding as to the necessary relation between interstate and intrastate commutation rates. He warned against over-reliance upon *expertise;* it is "the strength of modern government," but it "can become a monster which rules with no practical limits on its discretion."

[67] *United States v. Oregon State Medical Society*, 343 U.S. 326 (1952). It was pointed out that *American Medical Association v. United States*, 317 U.S. 519 (1943) involved a conspiracy in the District of Columbia, and therefore presented no commerce issue. Three important cases in the commerce field not involving questions of constitutional law were: *Federal Trade Commission v. Ruberoid Co.*, 343 U.S. 470 (1952), which approved a new approach of the Commission to the problem of curbing price discrimination under the Robinson-Patman Act; *Brannan v. Stark*, 342 U.S. 451 (1952), in which, by a four-to-three vote, the Court expressed disapproval of an order of the Secretary of Agriculture, under the Agricultural Marketing Agreement Act, relating to the marketing of milk in the Boston area by cooperative marketing associations; *National Labor Relations Board v. American National Insurance Co.*, 343 U.S. 395 (1952), where by a six-to-three vote the inclusion of "management functions" clauses in bargaining agreements was held to be within the terms of the Taft-Hartley Act.

[68] *Dennis v. United States*, 341 U.S. 494 (1951).

[69] *Sacher v. United States*, 343 U.S. 1 (1952). The Court had originally denied certiorari, 341 U.S. 952 (1951), Justices Black and Douglas dissenting, but later reconsidered and granted it, 342 U.S. 858 (1951).

Justice Jackson, speaking for the majority, made no direct mention of any constitutional issue. He said there were good practical reasons why a judge should have a summary contempt power, to protect the integrity of the judicial process, but that "summary" does not refer to the timing of the action in reference to the offense, but rather to a procedure which dispenses with formality. He could find no prejudice to these lawyers if the judge waited till the end of the trial, if their conduct warranted immediate summary punishment. "The overriding consideration is the integrity and efficiency of the trial process, and if the judge deems immediate action inexpedient he should be allowed discretion to follow the procedure taken in this case." In fact, to summon a lawyer and pronounce him guilty during the trial might prejudice the client by denying him counsel and give grounds for demanding a new trial. Furthermore, Justice Jackson thought it might be better for the lawyer if the judge waits till he cools off. Though he thought most judges reliable, he conceded that the contempt power may be abused, but if that happens appeal lies to the court of appeals and to this Court. He served notice that this Court "will unhesitatingly protect counsel in fearless, vigorous and effective performance of every duty pertaining to the office of the advocate on behalf of any person whatsoever. But it will not equate contempt with courage or insults with independence. It will also protect the processes of orderly trial, which is the supreme object of the lawyer's calling."

Justice Black dissented vigorously. He thought the record showed that the judge had been so bitterly hostile to these lawyers that he was disqualified to try them. "No man," he asserted, "should be forced to trial before a judge who has previously publicly attacked his personal honor and integrity. The risk to impartial justice is too great." Justice Black thought these men had been denied the constitutional rights to indictment by grand jury and trial by jury. The Court had previously reduced the contempt power to "the least possible power adequate to the ends proposed," the ends being decorum and obedience to orders.[70] Furthermore, he argued that there was no need for summary conviction because the trial was over and the danger of obstructing it had passed.

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[70] Citing *In re Oliver*, 333 U.S. 257 (1948).

Indeed, trial by jury was all the more necessary because the alleged offenses related to conduct that affronted the judge personally. Nor could Justice Black find much reassurance in the fact that lawyer-judges are available to review contempt citations, arguing that the constitutional guarantee of trial by jury is based on a preference for a trial by laymen.

Justice Frankfurter thought that the judge's accusations were too personal for him to act as both accuser and judge, and that it was established that no judge should sit in a case in which he is personally involved.[71] He also thought that Judge Medina had not been entirely without fault himself. Justice Douglas agreed that it would be difficult to decide who had behaved worse, the judge or the lawyers, and that no one was without blame. He also agreed with Justice Black that the defendants were entitled to trial by jury.

*Fair Procedure.* The decree of a federal District Court in a civil action under the Sherman Act required the issuance of patent licenses on a fair royalty basis. To fix reasonable royalty rates the Court directed the government and the offending company each to select two arbitrators, with these four choosing a fifth person in case of a stalemate. If agreement could not be had on the fifth man, then the trial judge would appoint someone or sit himself. In this instance he served as the crucial member of the committee himself. The company argued that the royalties must be determined in judical proceedings based on hearing and evidence. The Supreme Court disagreed, pointing out that it was always within the power of the trial judge to establish the royalty rates.[72] It was not mandatory for the judge to hold a full hearing or refer the royalty matter to a master. While the judge's procedure was an innovation, Justice Jackson asserted that "novelty is not synonymous with error." There was no abuse here in the discretion which a trial judge has in framing relief in anti-trust cases.

*Military Justice.* In *Madsen v. Kinsella,*[73] the Court held that in the absence of statutory limitations, the President as commander-in-chief may establish a U.S. Court of the Allied High Commission for Germany and authorize it to try a civilian citizen of the United States and dependent wife of a member of the Armed Forces, on a homicide charge. It was conceded that a regularly convened general court-martial would have had jurisdiction. The Court ruled that "since our nation's earliest days, such [military] commissions have been constitutionally recognized agencies for meeting many urgent governmental responsibilities related to war." These "common-law war courts" have taken many forms and names, without statutory prescription. The President's authority in this respect survives the end of hostilities. "The President," said Justice Burton, "has the urgent and infinite responsibility not only of combating the enemy but of governing any territory occupied by the United States by force of arms." Congress may legislate on this subject as it chooses, but when the Articles of War were revised in 1916 by extending the jurisdiction of courts-martial to include civilian offenders, an express reservation was made for military commissions. That the occupation courts were military commissions, the crucial issue, was assumed without proof or argument. Justice Black dissented alone, arguing that all legislative power is vested by the Constitution in Congress, and that the President is not specifically authorized to create courts to try American citizens.

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[71] *Cooke v. United States,* 267 U.S. 517 (1925).

[72] *Besser Manufacturing Co. v. United States,* 343 U.S. 444 (1952).

[73] 343 U.S. 341 (1952). See Louis Smith, *American Democracy and Military Power* (Chicago, 1951).

*Judicial Review of Administrative Decisions.* A standard clause in government contracts provides that all disputes involving questions of fact shall be decided by the contracting officer, with the right of appeal to the head of the department "whose decision shall be final and conclusive upon the parties thereto." The Court ruled that a finding by the head of the department on a question of fact may not be set aside by the Court of Claims unless it was founded on fraud, and that by fraud is meant conscious wrong-doing, with an intention to cheat or be dishonest.[74] It follows that a finding by the Court of Claims that the decision of the department head was "arbitrary," "capricious" and "grossly erroneous" is not sufficient to justify setting it aside. Three Justices dissented. Justice Douglas filed a very strong statement on the subject of administrative absolutism. He said the Court's rule in this case "makes a tyrant of every contracting officer."

*Eleventh Amendment.* The Georgia Railroad & Banking Company was chartered in 1833 by a special act which included exemption from taxation. In 1945 the Georgia Constitution was amended to include a provision declaring null and void "all exemptions from taxation heretofore granted in corporate charters." When the State Revenue Commissioner threatened to proceed against it for the collection of ad valorem taxes, the company filed suit in the state court for an injunction and a declaratory judgment, but the Georgia Supreme Court ruled this was an unconsented suit against the state,[75] and the U.S. Supreme Court dismissed an appeal on the ground that the judgment was based upon an adequate nonfederal ground.[76] Thereupon the company filed an action in the federal District Court for injunctive relief, and a three-judge court dismissed on the ground that it was an unconsented suit against the state contrary to the Eleventh Amendment. The Supreme Court disagreed unanimously, and remanded the case for a trial on the merits.[77] Chief Justice Vinson ruled that the action was not one to enforce an alleged contract with Georgia, as the court below supposed, but rather a suit to enjoin the collection of taxes in violation of federal constitutional rights. "This Court has long held," the Chief Justice asserted, "that a suit to restrain unconstitutional action threatened by an individual who is a state officer is not a suit against the State." This position was reexamined in the *Young* case,[78] and has been consistently followed. The rule is that the immunity of the state from judicial interference

[74] *United States v. Wunderlich*, 342 U.S. 98 (1951).

[75] *Musgrove v. Georgia Railroad & Banking Co.*, 204 Ga. 139, 49 S.E. 2d 26 (1948).

[76] 335 U.S. 900 (1949).

[77] *Georgia Railroad & Banking Co. v. Redwine*, 342 U.S. 299 (1952).

[78] *Ex parte Young*, 209 U.S. 123 (1908).

"does not extend to individuals who act as officers without constitutional authority."

*Relations with State Courts.* There were during the Term under review the usual cases dealing with the relations between state and federal courts. We were reminded once more that where the highest state court delivers no opinion and it appears that its judgment *might* have rested upon a nonfederal ground, the Supreme Court will not take jurisdiction to review the judgment.[79] One case was continued to enable petitioner's counsel to secure a determination in the state supreme court as to whether its judgment was intended to rest on an adequate independent state ground,[80] and later on the Court refused to regard a letter from the clerk of the state court, not apparently a part of the record, as a sufficient "determination."[81] In another instance, the case was continued to enable the petitioner to secure, in an appropriate state proceeding, a determination as to the effect upon the appeal of the repeal of the state statute the constitutionality of which was drawn in question by the appeal.[82] Finally, in another phase of the seemingly endless merry-go-round[83] of Illinois procedure, the Court remanded a case to the state's highest court for a determination of the adequacy of the state remedy for the protection of federal constitutional rights alleged to have been infringed in the course of trials.[84] The Court felt that it could not proceed until the state court had construed the meaning of the Illinois Post-Conviction Hearing Act, under which relief had been sought and dismissed without opinion.

## II. QUESTIONS OF STATE POWER

### 1. DUE PROCESS OF LAW

*Free Speech.* The Court at long last came to grips with the problem of motion picture censorship in *Joseph Burstyn, Inc. v. Wilson.*[85] A unanimous Court held unconstitutional a portion of a New York statute which required the licensing of all films by administrative officials, and denied licenses to any film which is "obscene, indecent, immoral, inhuman, sacrilegious, or is of such a character that its exhibition would tend to corrupt morals or incite to crime." The responsible agency barred the Italian film *The Miracle*, after a hearing, as being "sacrilegious." Justice Clark took note of the 1915 case in which the Court had ruled that the exhibition of motion pictures was a business pure and simple, outside the guarantee of a free press.[86] He overruled it, and pointed out that it had been decided before the Court expanded the reach of due process in the *Gitlow* case[87] in 1925.

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[79] *Stembridge v. Georgia,* 343 U.S. 541 (1952). Three Justices dissented without opinion. The Court's decision might conceivably encourage state appellate courts to dispose of cases raising federal questions without opinion.

[80] *Dixon v. Duffy,* 342 U.S. 33 (1951).

[81] *Dixon v. Duffy,* 343 U.S. 393 (1952).

[82] *Palmer Oil Corp. v. Amerada Petroleum Corp.,* 342 U.S. 35 (1951).

[83] The phrase is Justice Rutledge's, in *Marino v. Ragen,* 332 U.S. 561, 570 (1947). For a brief discussion of the Illinois Post-Conviction Hearing Act and the events leading to its adoption, see David Fellman, "The Federal Right to Counsel in State Courts," *Nebraska Law Review,* Vol. 31, at pp. 31–38 (1951).

[84] *Jennings v. Illinois,* 342 U.S. 104 (1951). On the remand, the state court's decision was eminently satisfactory, *People v. Jennings,* 411 Ill. 21, 102 N.E. 2d 824 (1952).

[85] 343 U.S. 495 (1952). See Note, "Motion Pictures and the First Amendment," *Yale Law Journal,* Vol. 60, pp. 696–719 (1951); Theodore R. Kupferman and Philip J. O'Brien, Jr., "Motion Picture Censorship—The Memphis Blues," *Cornell Law Quarterly,* Vol. 36, pp. 273–300 (1951); Ruth A. Inglis, *Freedom of the Movies* (Chicago, 1947). For a discussion of the censor's trade see Hollis Alpert, "Talks with a Movie Censor," *Saturday Review of Literature,* November 22, 1952, pp. 21, 50–54. For the background of the *Burstyn* case see Bosley Crowther, "The Strange Case of 'The Miracle'," *Atlantic Monthly,* Vol. 187, pp. 35–39 (1951).

Justice Clark asserted that there was no doubt of the fact "that motion pictures are a significant medium for the communication of ideas," in very many ways. Their importance is not lessened because they are "designed to entertain as well as to inform," nor does it matter that movies are exhibited for profit, since books, newspapers and magazines are also published for profit. Even if it is conceded that motion pictures have a greater capacity for evil, it does not follow that the "substantially unbridled censorship" present in this case is justified. It is clear that there is, under the Constitution, no absolute freedom to exhibit any kind of movie any time and in any place, and it is also true that movies are not necessarily subject to the same rules which govern other media of communication. Nevertheless, this statute imposes a previous restraint, and as was held in the *Near* case,[88] such restraint can be justified only in exceptional circumstances.

The New York Court of Appeals had defined "sacrilege" as meaning "that no religion, as that word is understood by the ordinary, reasonable person, shall be treated with contempt, mockery, scorn and ridicule." It also said that sacrilege is "the act of violating or profaning anything sacred." With such a statute, thus authoritatively defined, said Justice Clark, "the censor is set adrift upon a boundless sea amid a myriad of conflicting currents of religious views, with no charts but those provided by the most vocal and powerful orthodoxies." In fact, this test might raise substantial questions concerning the principle of the separation of church and state. " . . . The state has no legitimate interest in protecting any or all religions from views distasteful to them which is sufficient to justify prior restraints upon the expression of those views." Finally, Justice Clark drew attention to the fact that the Court was not deciding whether a state may censor motion pictures under a clearly-drawn statute designed to bar obscene films.

Justice Frankfurter filed a lengthy and learned concurring opinion, maintaining that as a technical ecclesiastical term sacrilege has a long history, and means essentially injury to priests and religious symbols. He thought that Catholic doctrine limited the term to protecting physical things against injurious acts. In English law sacrilege meant stealing from a church or otherwise damaging church property. This also is the dictionary and encyclopedia definition, as evidenced by numerous citations from the Eighteenth Century onwards. He also thought that the absence of an established church in the United States made the term even more vague. But as defined by the New York Court he maintained that the statute permits the censorship of religious opinions, and furthermore, that its lack of appropriate objective standards offends due process.[89]

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[86] *Mutual Film Corporation v. Industrial Commission of Ohio*, 236 U.S. 230 (1915).

[87] *Gitlow v. New York*, 268 U.S. 652 (1925). The decision in the *Burstyn* case was foreshadowed by a dictum in the recent antitrust case, *United States v. Paramount Pictures, Inc.*, 334 U.S. 131, 166 (1948), where Justice Douglas remarked that "we have no doubt that moving pictures, like newspapers and radio, are included in the press whose freedom is guaranteed by the First Amendment."

[88] *Near v. Minnesota*, 283 U.S. 697 (1931).

Another case of surpassing importance in the field of free speech was *Beauharnais v. Illinois,*[90] which, by a five-to-four vote, upheld for the first time the constitutionality of a group libel law.[91] Beauharnais is president of a Chicago organization, the White Circle League, which demands the segregation of Negroes. On one occasion he distributed leaflets in the streets containing a petition to the City Council demanding segregation, and stated: "If persuasion and the need to prevent the white race from becoming mongrelized by the negro will not unite us, then the aggressions . . . rapes, robberies, knives, guns and marijuana of the negro, surely will." Beauharnais was convicted in the Municipal Court of Chicago and fined $200 for violating a statute which forbids the publication of "any lithography, moving picture, play, drama or sketch, which publication or exhibition portrays depravity, criminality, unchastity, or lack of virtue of a class of citizens, of any race, color, creed or religion which said publication or exhibition exposes the citizens of any race, color, creed or religion to contempt, derision, or obloquy or which is productive of breach of the peace or riots. . . . "

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[89] In *Gelling v. Texas,* 343 U.S. 960 (1952), a Texas decision upholding a municipal ordinance which authorized a board of censors to deny a license for the exhibition of any movie which in its opinion was "of such character as to be prejudicial to the best interests of the people" was reversed *per curiam* and without opinion, on the authority of the *Burstyn* case and *Winters v. New York,* 333 U.S. 507 (1948). Justice Frankfurter filed a brief statement to point up the fact that the statute violated due process on account of indefiniteness, and Justice Douglas concurred separately to emphasize the evil of prior restraint, here in "flagrant form."

[90] 343 U.S. 250 (1952).

[91] On this subject see Zechariah Chafee, Jr., *Government and Mass Communications* (Chicago, 1947), Vol. I, Chap. 5; Note, "Group Libel Laws: Abortive Efforts to Combat Hate Propaganda," *Yale Law Journal,* Vol. 61, pp. 252–64 (1952). For articles on free speech problems published during the 1951 Term see: Edward S. Corwin, "Bowing Out 'Clear and Present Danger,'" *Notre Dame Lawyer,* Vol. 27, pp. 325–59 (1952); Louis B. Boudin, " 'Seditious Doctrines' and the 'Clear and Present Danger' Rule," *Virginia Law Review,* Vol. 38, pp. 143–86, 315–56 (1952); Elliot L. Richardson, "Freedom of Expression and the Function of Courts," *Harvard Law Review,* Vol. 65, pp. 1–54 (1951); Wallace Mendelson, "Clear and Present Danger—from Shenck to Dennis," *Columbia Law Review,* Vol. 52, pp. 313–33 (1952); Burton C. Bernard, "Avoidance of Constitutional Issues in the U. S. Supreme Court: Liberties of the First Amendment," *Michigan Law Review,* Vol. 50, pp. 261–96 (1951); Note, "Constitutionality of the Law of Criminal Libel," *Columbia Law Review,* Vol. 52, pp. 521–34 (1952); Walter L. Daykin, "The Employers' Right of Free Speech under the Taft-Hartley Act," *Iowa Law Review,* Vol. 37, pp. 212–41 (1952). See also Zechariah Chafee, Jr., *Thirty-Five Years with Freedom of Speech* (New York, 1952).

Speaking for the majority, Justice Frankfurter noted that the Illinois court treated this law as a criminal libel law, designed to prohibit words liable to cause a breach of the peace, and that this is the traditional justification for punishing libels criminally. Today every state punishes libels directed at individuals; if a state may do this, he maintained, then it may punish utterances directed at a defined group, unless the utterances are unrelated to the peace and well-being of the state. He thought there was plenty of evidence, both here and abroad, to support the conclusion of Illinois "that wilful purveyors of falsehood concerning racial and religious groups promote strife and tend powerfully to obstruct the manifold adjustments required for free, ordered life in a metropolitan, polyglot community." Illinois has a long and bitter history of racial tension and violence, from the murder of the abolitionist Lovejoy in 1837 to the Cicero riots of 1951. The law under discusssion was enacted in 1917, when the state was struggling to assimilate vast numbers of new inhabitants. It is out of bounds, Justice Frankfurter declared, for the Court to say that this legislation will not help, since no one has the solution, and the legislature has a choice of policy so long as it is not unrelated to the problem. It would be "arrant dogmatism" for the Court to say that the legislature may not believe that speech directed at the reputation of groups cannot be outlawed. Justice Frankfurter also ruled that the statute was not void for vagueness. He saw no occasion for considering the "clear and present danger" test, since libellous utterances are not within the area of constitutionally protected speech.[92]

Each of the four dissenters filed his own opinion. Justice Black thought that Beauharnais was exercising the constitutionally-guaranteed right to petition his elected representatives. He criticized the Court for ignoring the First Amendment, and for the fact that it "degrades First Amendment freedoms to the 'rational basis' level." And he rejected altogether the view that this matter must be left to legislative trial and error. "My own belief is that no legislature is charged with the duty or vested with the power to decide what public issues Americans can discuss." This statute, he asserted, imposes censorship upon every medium of communication, and to sugar coat it by calling it a group libel law may make it more palatable but not less deadly. The law of libel, he insisted, has always dealt with individuals, not huge groups.

Justice Reed thought the statute was too vague because of its use of such terms as "virtue," "derision," and "obloquy." While fully aware of the terrible evil of group vilification, Justice Douglas repeated his well-known arguments, that the First Amendment is couched in absolute terms, that speech has a preferred position in our constitutional law, and that the tendency of recent decisions of the Court to permit regulation of the right of free speech "within reasonable limits" was "an ominous and alarming trend." He declared that legislation dealing with free speech should not be considered in the same light as one considers social and economic legislation, for while the Constitution does not guarantee the economic status quo, it places free speech apart, "above and beyond the police power."

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[92] The well-known case of *State v. Klapprott*, 127 N.J.L. 395, 22 Atl. 2d 877 (1941) was distinguished on the ground that it did not involve a case of libel at all, and dealt with quite a different statute.

Justice Jackson's dissenting opinion sounded more like a concurring opinion. He did conclude that the petitioner had been denied proper safeguards at the trial, in that he was not given a chance to justify his statements by proving their truth, and was denied the defense of privilege as to comment on public matters. Furthermore, he thought there was no showing of any clear and present danger of an injury. Otherwise, his opinion was devoted to arguing mainly that the general restraints of the Fourteenth Amendment do not incorporate the more precise provisions of the First Amendment, and that the states have greater powers over this subject than does Congress. He would not limit the states to the severe standards appropriate for federal power, because the two great purposes of libel laws, to protect integrity of reputation and public tranquility, are not objects of federal cognizance, but are largely local functions. He thought that state libel laws do not present a threat to a free press because of the available safeguards: the right to jury trial of the law and facts, the defense of truth, and the clear and present danger rule.

*Loyalty and Subversion.* New York's Feinberg Law, adopted in 1949 to weed out subversives from the public schools, was sustained by a six-to-three vote in *Adler v. Board of Education of the City of New York.*[93] It should be observed that well before 1949 New York laws denied any form of public employment to those who wilfully advocate or teach the overthrow of government by any unlawful means or organize or join any group advocating such a policy. The Feinberg Law was written to further implement established policy. It provides that the Board of Regents, "after inquiry, and after such notice and hearing as may be appropriate," shall prepare a list of subversive organizations. The Board is authorized to utilize any similar listings of any federal agency. Then the statute provides that membership in any listed organization "shall constitute prima facie evidence of disqualification." The preamble of the Feinberg Law made elaborate "findings" to the effect that members of subversive groups, and especially of the Communist party, have infiltrated into public employment in the public schools, are disseminating propaganda to children, do not follow the truth and free inquiry, and are very subtle and escape detection. Before one is fired or denied a job, he is given a right to a full hearing, with representation by counsel and a chance for judicial review. Justice Minton, speaking for the majority, stressed that the listings were made only after full notice and hearing, and that in addition the New York Court of Appeals had ruled that listed organizations have a right of review.

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[93] 342 U.S. 485 (1952). See Walter Gellhorn, ed., *The States and Subversion* (Ithaca, 1952). See also Lawrence H. Chamberlain, *Loyalty and Legislative Action* (Ithaca, 1951), which deals only with the New York experience; Marie Jahoda and Stuart W. Cook, "Security Measures and Freedom of Thought: An Exploratory Study of the Impact of Loyalty and Security Programs," *Yale Law Journal*, Vol. 61, pp. 295–333 (1952); Osmond K. Fraenkel, "Law and Loyalty," *Iowa Law Review*, Vol. 37, pp. 153–74 (1952).

The Supreme Court ruled that this statute did not violate free speech. It is clear that persons have a right "to assemble, speak, think and believe as they will," but "it is equally clear they have no right to work for the State in the school system on their own terms."[94] The state has a right to prescribe reasonable terms, and those who do not choose to work on such terms "are at liberty to retain their beliefs and associations and go elsewhere." The schoolroom, said Justice Minton, is a sensitive area, and the state has a vital concern in preserving its integrity. He then proceeded to give the doctrine of guilt by association the Court's stamp of approval in the following words: "One's associates, past and present, as well as one's conduct, may properly be considered in determining fitness and loyalty. From time immemorial, one's reputation has been determined in part by the company he keeps." Furthermore, Justice Minton ruled that the Feinberg Law did not conflict with the due process doctrine of unreasonable presumptions. The New York court construed the statute as requiring that the member of the organization must have known about its purpose. The legislative presumption that a member of such an organization supports the things the organization stands for is not contrary to fact or the "generality of experience." Nor was there any denial of procedural due process, since the presumption is not conclusive, and arises in a hearing where the person against whom it is drawn has full opportunity to rebut it. The constitutional issue of vagueness was not considered because it had not been raised in the state courts.

Justice Black dissented briefly, lamenting the "rapidly multiplying legislative enactments which make it dangerous—this time for school teachers—to think or say anything except what a transient majority happen to approve at the moment." Justice Frankfurter dissented on the theory that the issues were not ripe for litigation, since the legislative scheme had not yet been put into effect, and the issues were therefore merely abstract and speculative. In addition to crying before they were hurt, the eight petitioners had no standing to sue, either as taxpayers or parents, the injury being either *de minimis* or altogether too tenuous or argumentative. Justice Douglas dissented on the merits in a noble statement which will live as long as Americans remain interested in human freedom. It must be read in full to be appreciated. He refused to concede that a civil servant can be forced to sacrifice his civil rights; he vigorously rejected the concept of guilt by association, and warned that the sanctioned procedure will raise havoc with academic freedom. "Youthful indiscretions, mistaken causes, misguided enthusiasms—all long forgotten—become the ghosts of a harrowing present. Any organization committed to a liberal cause, any group organized to revolt against an hysterical trend, any committee launched to sponsor an unpopular program becomes suspect.

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[94] Citing *United Public Workers v. Mitchell,* 330 U.S. 75 (1947).

These are the organizations into which Communists often infiltrate. Their presence infects the whole, even though the project was not conceived in sin. A teacher caught in that mesh is almost certain to stand condemned." Furthermore, once membership is established, the views of the teacher must be examined to decide whether his connection was or is innocent. Thus, "the law inevitably turns the school system into a spying project." Of course, he concluded, the country's schools need not become forums for spreading the Marxist creed, but the guilt of the teacher should turn on overt acts; his private life and political and social philosophy should not be the cause of reprisals.

*Religious Freedom.* In 1948, eight Justices agreed in the *McCollum* case[95] that a "released time" plan of religious instruction in the public schools of Champaign, Illinois, was forbidden by the Fourteenth Amendment as being inconsistent with the principle of the separation of church and state. The instruction was given during school time in the public school buildings, by outside religious teachers supplied by the various denominations. The Court's decision was promptly subjected to an extraordinary amount of heated criticism. Apparently the Court couldn't take it, for in *Zorach v. Clauson*[96] a majority of six Justices beat a retreat. This case involved a test of the New York City program of "dismissed time," the only difference being that the children leave the school buildings and go to religious centers for their religious instruction. All the other circumstances were about the same as in *McCollum.* The parents must request dismissal of students; the churches supply the application blanks; those not released stay in the classrooms; the churches report attendance; above all, religious training is given during school time. In New York the teachers are forbidden to announce the program to the students and to comment on attendance or nonattendance. The *Zorach* litigation was initiated by two men as taxpayers, residents and parents. The trial court denied a motion for a trial on the asserted issues of fact, and dismissed the proceedings on the merits. The New York Court of Appeals approved of this procedure on the ground that the matters pleaded were not well pleaded, a great many of petitioners' allegations being "conclusory in character," insufficiently supported by facts.[97] Furthermore, the New York court ruled that many of the conclusory allegations suggest merely that teachers have been disobeying the rules and regulations. If true, this would warrant at most disciplinary proceedings against the offending teachers, not a total discontinuance of the program, which was the relief prayed for.

Justice Douglas delivered the opinion of the Court. He made it clear that the wisdom or efficiency of the program from an educational point of view was no concern of the Court. Furthermore, he thought it would take "obtuse reasoning" to inject into this case any issue of freedom of religion, since nothing in the record showed that any student was forced to take religious instruction. The school authorities were neutral. The refusal of the state courts to permit the introduction of evidence on the issue of coercion, Justice Douglas ruled, rested on an independent state ground, and therefore was not reviewable. Since the allegation did not even implicate the school authorities, he insisted that it cannot be said that a federal right was being defeated by a rule of local practice. Finally, he held that this program was not an establishment of religion within the meaning of the First Amendment. It is clear beyond doubt that this Amendment decrees a "complete and unequivocal" separation, but it "does not say that in every and all respects there shall be a separation." Church and state are not required to be hostile and suspicious aliens to each other. Thus, churches enjoy tax exemptions, police and fire protection; prayers are given in legislative halls; messages of the Chief Executive appeal to God; oaths are given in courts, etc. It would be pushing the principle of separation to extremes to hold the New York law unconstitutional. "We are a religious people whose institutions presuppose a Supreme Being," said Justice Douglas. "When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions." Finally, Justice Douglas distinguished the *McCollum* case on the ground that there the public school classrooms were used for religious instruction. Here the public schools do no more than accommodate their schedules to a program of outside religious instruction. "We follow the *McCollum* case. But we cannot expand it to cover" this situation, for "we cannot read into the Bill of Rights such a philosophy of hostility to religion."

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[95] *Illinois* ex rel. *McCollum v. Board of Education,* 333 U.S. 203 (1948).

[96] 343 U.S. 306 (1952). On this general subject see: George E. Reed, "Church-State and the Zorach Case," *Notre Dame Lawyer,* Vol. 37, pp. 529–51 (1952); Leo Pfeffer, "Church and State: Something Less Than Separation," *University of Chicago Law Review,* Vol. 19, pp. 1–29 (1951); J. M. O'Neill, *Catholicism and American Freedom* (New York, 1952); Mark De Wolfe Howe, *Cases on Church and State in the United States* (Cambridge, 1952); William W. Boyer, Jr., "Public Transportation of Parochial School Pupils," *Wisconsin Law Review,* Vol. 1952, pp. 64–90.

[97] *Zorach v. Clauson,* 303 N.Y. 161, 100 N.E. 2d 463 (1951).

Justices Black, Frankfurter, and Jackson each filed a dissenting opinion. They could see no significant difference between this case and *McCollum*. The distinction, said Justice Jackson, is "trivial, almost to the point of cynicism." Actually, Justice Black asserted, *McCollum* held that the state cannot constitutionally manipulate the compelled classroom hours of its compulsory school machinery so as to channel children into sectarian classes, and yet that is exactly what New York does here. As to Americans being a religious people, he pointed out that this was quite as true when the First Amendment was adopted. He also noted that since the New York regulations refer to "duly constituted religious bodies," the state will have to decide what constitutes a religion; this is censorship, which is what the Constitution forbids. The American people have always been divided into many sects, and this was and is the justification for the constitutional mandate to keep church and state "completely separate." Justice Black also thought that the Court's opinion drew an invidious distinction between religionists and nonbelievers. He concluded: "State help to religion injects political and party prejudices into a holy field. It too often substitutes force for prayer, hate for love, and persecution for persuasion. Government should not be allowed, under cover of the soft euphemism of 'co-operation,' to steal into the sacred area of religious choice."

Justice Frankfurther conceded, as the majority opinion argued, that the state may close the schools so that pupils may attend religious exercises; it may dismiss classes for any reason or no reason. But the essence of this case is that New York did not suspend operations. He said: "There is all the difference in the world between letting the children out of school and letting some of them out of school into religious classes. . . . The pith of the case is that formalized religious instruction is substituted for other school activity which those who do not participate in the released-time program are compelled to attend." And he complained that there was no proof of coercion because the petitioners were not allowed to make proof of it, and insisted that issues raising federal claims cannot be foreclosed by state rules of practice.

Justice Jackson thought it was clear that the New York program was founded on a use of the state's power of coercion. It is the truant officer who makes this system more effective than voluntary attendance after school hours; the school serves "as a temporary jail for a pupil who will not go to Church." And he declared that his position was not anti-religious. "My evangelistic brethren confuse an objection to compulsion with an objection to religion."

At long last, the Court had a chance, in *Doremus v. Board of Education of Hawthorne,*[98] to rule on the constitutionality of Bible-reading in public schools, but refused to take it. The case tested the validity of a New Jersey statute requiring the reading, without comment,[99] of five verses of the Old Testament at the opening of each school day. Six Justices voted to dismiss an appeal on jurisdictional grounds. As to the petitioner who sued as a parent, it was noted that the child had since graduated, and therefore the case was moot. In any event, Justice Jackson pointed out that any student on request of the parents could be excused from Bible-reading, and hence no child was compelled to do anything, even to listen. The other petitioner was a taxpayer, and the Court ruled that he had not shown any direct injury, even though he may have had standing to sue under state practice. Of course, said Justice Jackson, a state court may give an advisory opinion on a federal constitutional question, but it isn't reviewable unless there is "a good-faith pocketbook action." He could find here no "direct and particular financial interest"; the grievance "is not a direct dollars-and-cents injury but is a religious difference." This is the first time the Supreme Court has ever said that the federal *Frothingham* rule[100] forbidding taxpayers' suits in federal courts for lack of interest applies to reviews of state cases. Speaking for three dissenters, Justice Douglas pointed out what most observers would take as a self-evident proposition, that "New Jersey can fashion her own rules governing the institution of suits in her courts."

*Fair Procedure.* A prisoner serving a life sentence in a Michigan state penitentiary filed a petition for a writ of habeas corpus alleging that while he was living in Chicago, Michigan officers forcibly seized him and took him to Michigan, thus violating his due process rights. The District Court denied the writ without a hearing, but the Court of Appeals reversed on the ground that the Federal Kidnaping Act had changed the rule of prior holdings. The Supreme Court disagreed,[101] asserting that it has never departed from the rule of *Ker v. Illinois*,[102] that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by a forcible abduction. Due process is satisfied, said Justice Black, if the defendant had fair notice of the charges and a fair trial. The Constitution does not require a court "to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." It is for Congress, not the Court, to add to the sanctions written into the Federal Kidnaping Act a further sanction barring a state from prosecuting persons wrongfully brought to it by its officers.

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[98] 342 U.S. 429 (1952).

[99] Query: What business does any American public school have to read or study anything that cannot be commented on?

[100] *Frothingham v. Mellon,* 262 U.S. 447 (1923).

Oregon is the only state in the Union which requires a person accused of crime who pleads insanity as a defense to carry the burden of proof, and to establish his defense beyond a reasonable doubt. This is the English rule and was also the rule of most American courts in the Nineteenth Century. The rule for federal prosecutions, announced by Justice Harlan in 1895 in *Davis v. United States*,[103] is that an accused is "entitled to an acquittal of the specific crime charged if upon all the evidence there is reasonable doubt whether he was capable in law of committing crime." In *Leland v. Oregon*[104] the Court held, by a seven-to-two vote, that Oregon is not obliged to follow the *Davis* rule, which is not a constitutional doctrine but only a rule of practice to be followed in federal courts. Justice Clark also noted that some twenty states place the burden on the defendant of establishing his insanity by a preponderance of the evidence, and he thought the difference between this standard and Oregon's is not of such magnitude as to be determinative of the constitutional issue. Above all, it was emphasized that in order to convict, Oregon required the prosecutor to prove every element of the offense charged beyond a reasonable doubt, and that only on the issue of insanity was the burden of proof placed on the defendant. In all English-speaking courts, he pointed out, the defendant is obliged to introduce proof if he would overcome the presumption of sanity. But in addition, the Oregon statute provides that proof of a "morbid propensity" is not sufficient to support the defense of insanity. Justice Clark said that this merely means that the state has adopted the "right and wrong" test of legal insanity, instead of the "irresistible impulse" test, and that the former is the exclusive test of criminal responsibility in a majority of American jurisdictions. He refused to believe that the science of psychiatry has come so far that the states should be compelled to eliminate the "right and wrong" test from their criminal law.

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[101] *Frisbie v. Collins*, 342 U.S. 519 (1952). See Note, "Illegal Abductions by State Police: Sanctions for Evasion of Extradition," *Yale Law Journal*, Vol. 61, pp. 445–50 (1952).

[102] 119 U.S. 436 (1886). To the same effect was *Mahon v. Justice*, 127 U.S. 700 (1888).

[103] 160 U.S. 469, 484.

[104] 343 U.S. 790 (1952).

Justice Frankfurter, with whom Justice Black agreed, filed a dissenting opinion. He agreed that in the present state of knowledge no single test of insanity can be imposed on the states, but he argued that when a state has chosen its theory for testing culpability, it is a denial of due process to send a man to his doom if he cannot prove beyond a reasonable doubt that he was insane. Oregon, in his judgment, is the only state which makes inroads on the principle that the state must prove guilt by requiring the accused to prove beyond a reasonable doubt the absence of one of the essential elements for the commission of murder, culpability.

*Coerced Confessions.* A novel question reached the Court in *Rochin v. California.*[105] When Los Angeles policemen, on information that Rochin was selling narcotics, unlawfully entered his dwelling, he swallowed two capsules containing morphine. He was taken to a hospital, his stomach was pumped against his will, and he was convicted on the basis of the regurgitated evidence. The Court by unanimous vote set aside the conviction. Justice Frankfurter put the decision on due process grounds, that is to say, he found that this "conduct shocks the [his?] conscience." To permit this brutal conduct, he said, would discredit the law and brutalize society. Justice Black, concurring separately, thought this was a clear case of self-incrimination, repeating once more his well-known objections to reliance upon the "nebulous standards" of due process when the specific provisions of the Fifth Amendment afford a much better protection for human rights. And Justice Douglas observed, that since all but four states apparently would admit this evidence, how can the Court say that what California did violated the "decencies of civilized conduct?" He too thought the Fifth Amendment provided "an unequivocal, definite and workable rule of evidence for state and federal courts."

In two cases[106] appeals raised questions concerning confessions allegedly coerced, but in both of them the Court affirmed the convictions, treating the question of voluntariness as the decisive issue. In both cases Justices Black and Douglas dissented because the confessions were obtained by the police before arraignment. These are additional phases of a long campaign by these two Justices to discourage the police practice of holding persons for questioning incommunicado.

*Right to Counsel.* The prevailing rule is that a defendant in a noncapital state criminal case is constitutionally entitled to representation by counsel only if there are special circumstances showing that justice could not be had without counsel. In *Palmer v. Ashe*[107] five Justices ruled that a young irresponsible boy who had been incarcerated previously for imbecility came within this rule.[108] In a case coming up from Pennsylvania,[109] judgment was reversed on the authority of *Townsend v. Burke*,[110] which held that due process has been denied where the lack of counsel at the time of sentencing resulted in actual prejudice to the defendant.[111]

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[105] 342 U.S. 165 (1952). See Carl H. Imlay, "The Paradoxical Self-Incrimination Rule," *Miami Law Quarterly*, Vol. 6, pp. 147–61 (1952).

[106] *Stroble v. California*, 343 U.S. 181 (1952); *Gallegos v. Nebraska*, 342 U.S. 55 (1951). The *Stroble* case also involved the issue of trial by newspapers; on the facts the Court concluded that the defendant had a fair trial. See Note, "Due Process for Whom—Newspaper or Defendant," *Stanford Law Review*, Vol. 4, pp. 101–11 (1951); Note, "Freedom of the Press—A Menace to Justice," *Iowa Law Review*, Vol. 37, pp. 249–61 (1952).

*Jurisdiction to Tax.* An Ohio corporation owns boats and barges which it employs for the transportation of oil along the Mississippi and Ohio Rivers. While the vehicles are registered in Cincinnati, and are stopped in Ohio occasionally for fuel or repairs, they neither pick up nor discharge oil in Ohio, their main terminals are in four other states, and the mileage travelled through waters bordering Ohio is very small. The Court held, two Justices dissenting, that an Ohio ad valorem personal property tax on the full value of all these vessels violated due process.[112] The rule now is that the apportionment principle which is applied to railroad cars used in interstate commerce also applies to vessels moving in interstate operations in inland waters.[113] "The rule which permits taxation by two or more states on an apportionment basis," Justice Douglas stated, "precludes taxation of all of the property by the state of the domicile." Otherwise there would be multiple taxation of interstate operations, and the tax would be unrelated to the benefits extended by the taxing state.

*Jurisdiction to Entertain Suits.* During the Japanese occupation a foreign corporation owning mines in the Philippines carried on in Ohio a continuous and systematic, though limited, part of its general business, including directors' meetings, payment of salaries, purchasing of machinery, stock transfers, banking operations, etc. A nonresident of Ohio filed an action in personam against the company, for dividends and damages due to failure to issue stock certificates, in the Ohio Court of Common Pleas. The trial court sustained a motion to quash the service of summons on the defendant, and the Supreme Court of Ohio affirmed. The U.S. Supreme Court vacated judgment and remanded the case, on the ground that while federal due process does not *compel* a state to open its courts to a proceeding against a foreign corporation to enforce a cause of action not arising in the state and unrelated to the corporation's activities within the state, due process does not on the other hand *prohibit* Ohio from granting such relief.[114] Whether such a suit can be brought depends upon whether the business done in Ohio by the foreign corporation was sufficiently substantial, and reviewing the facts, the Court found that the Ohio activities were substantial. The conclusion was that it would not violate due process for Ohio either to take or decline jurisdiction.

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[107] 342 U.S. 134 (1951).

[108] Four Justices refused to believe that the trial court would have accepted the plea of a mental defective.

[109] *Foulke v. Burke*, 342 U.S. 881 (1951).

[110] 334 U.S. 736 (1948).

[111] For other publications dealing with civil liberties problems see: Robert K. Carr, *The House Committee on Un-American Activities* (Ithaca, 1952); Thomas I. Emerson and David Haber, *Political and Civil Rights in the United States* (Buffalo, 1952); American Jewish Congress and National Association for the Advancement of Colored People, *Civil Rights in the United States in 1951* (New York, 1952); Morroe Berger, *Equality by Statute* (New York, 1952); Jacob D. Hyman, "Judicial Standards for the Protection of Basic Freedoms," *Buffalo Law Review*, Vol. 1, pp. 221–44 (1952); Sydney Brodie, "The Federally-Secured Right to be Free from Bondage," *Georgetown Law Journal*, Vol. 40, pp. 367–98 (1952); Whitney R. Harris, "Freedom and Businessmen," *Iowa Law Review*, Vol. 37, pp. 196–211 (1952); Comment, "Passport Refusals for Political Reasons: Constitutional Issues and Judicial Review," *Yale Law Journal*, Vol. 61, pp. 171–204 (1952); Joseph S. Ransmeier, "The Fourteenth Amendment and the 'Separate but Equal' Doctrine," *Michigan Law Review*, Vol. 50, pp. 203–60 (1951); E. H. Hobbs, "Negro Education and the Equal Protection of the Laws," *Journal of Politics*, Vol. 14, pp. 488–511 (1952); Chester James Antieau, "Equal Protection Outside the Clause," *California Law Review*, Vol. 40, pp. 362–77 (1952); Pamela H. Rice and Milton Greenberg, "Municipal Protection of Human Rights," *Wisconsin Law Review*, Vol. 1952, pp. 679–710.

[112] *Standard Oil Co. v. Peck*, 342 U.S. 382 (1952).

[113] *Ott v. Mississippi Valley Barge Line Co.*, 336 U.S. 169 (1949).

### 2. STATE POWER OVER ELECTIONS

There were two interesting cases during the Term dealing with state legislation affecting the conduct of elections. *Ray v. Blair*[115] sustained a requirement made by the Alabama State Executive Committee of the Democratic party, pursuant to statutory authority, that every candidate for presidential elector pledge himself to support any candidate named by the Democratic National Convention. It will be recalled that in 1948 one Tennessee elector chosen on the Truman ticket voted for the Dixiecrat candidate. The Alabama Supreme Court had ruled that this pledge was in violation of the Twelfth Amendment, under which the electors are free agents. Speaking for a majority of five, Justice Reed pointed out that the requirement of a pledge from primary candidates is not unusual, especially in the one-party South. He argued that while presidential electors exercise a federal function, they are not federal officers; they act by authority of the state, which in turn gets its authority from the federal Constitution, and the Constitution does not forbid this pledge. Thus it is immaterial whether the primary is part of the election machinery, for the question is whether some constitutional provision is violated. Justice Reed ruled that the Twelfth Amendment does not require absolute freedom for the elector; it does not prevent an elector from pledging himself in advance, and as a matter of history it is known that electors are never expected to do otherwise than support the party nominees. In fact, more than twenty states do not even print the names of the candidates for elector on the ballot. Whether or not the pledge is legally enforceable has nothing to do with the issue of the validity of the pledge itself.

Justice Black, who is from Alabama, and Justice Frankfurter, who was ill, and who feels that he ought to record the reason for not participating, took no part in the disposition of this case. Justice Jackson, in a dissenting opinion concurred in by Justice Douglas, maintained that the original intent was that electors would be free agents, and that the powers granted federal officials by the Constitution cannot be forfeited by the Court for disuse. "A political practice which has its origin in custom must rely upon custom for its sanctions." He thought it would be a gain to abolish the whole electoral college system and provide for direct popular election of the President, but he complained that the Court's decision moves in the direction of entrenching the worst features of the existing system. Above all, he argued that the Court's sanctioning of this "new instrument of power" would strengthen and centralize party control. He seemed to take it for granted that this would be a bad thing.

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[114] *Perkins v. Benguet Consolidated Mining Co.*, 342 U.S. 437 (1952).

[115] 343 U.S. 214 (1952). See Joe Pilcher, "*Ray v. Blair*—Its Political and Legal Significance," *Alabama Law Review*, Vol. 4, pp. 248–83 (1952).

*Day-Brite Lighting, Inc. v. Missouri*[116] upheld a state law providing that an employee may absent himself from his employment for four hours between the opening and closing of the polls without penalty or deduction of wages, the employer specifying the hours. Justice Douglas brushed aside the appeal to liberty of contract, which once carried so much weight: "Our recent decisions make plain that we do not sit as a super-legislature to weigh the wisdom of legislation nor to decide whether the policy which it expresses offends the public welfare." Justice Douglas regarded the Missouri law as a form of minimum wage requirement, though not for the usual purpose of protecting health and morals, but rather "to safeguard the right of suffrage," which in our system is "basic and fundamental." Due process is not necessarily transgressed by requiring the employer to pay wages for the period when the employee performs no services. Many forms of regulation reduce the net return of the enterprise, and most regulations of business impose financial burdens without compensation. Justice Jackson dissented because the voter in question lived only 200 feet from the polling place and it actually took him only about five minutes to vote. He thought the analogy with minimum wage laws was "farfetched and unconvincing." And he observed that "a state-imposed pay-for-voting system appear[s] to be a confession of failure of popular representative government."

### 3. STATE POWER AND THE COMMERCE CLAUSE

*Regulation.* San Diego County, California, requires all cab drivers to take out permits, upon payment of a $1 annual fee, and after passing an examination testing knowledge of the vehicle code, traffic regulations and the geography of the county. Permits may be denied for bad moral character, violation of the regulations, or conviction for an offense involving moral turpitude. The Court held, by a five-to-four vote, that the ordinance could be applied to cab drivers who picked up passengers in Mexico and transported them across the unincorporated area of the county solely to points outside the area.[117] The Court found that the Federal Motor Carrier Act of 1935 and the relevant ICC regulations did not preempt the field, and further, that the operation of taxicabs is a local business, which is why Congress left the field largely to the states. Absent discriminatory treatment or the imposition of a direct burden, the regulation in this fashion of all taxicabs operating in the community affects interstate and foreign commerce only indirectly. The four dissenting Justices thought that the petitioners were engaged solely in foreign commerce, and that the local ordinance levied a tax on the privilege of engaging in such commerce.

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[116] 342 U.S. 421 (1952).

[117] *Buck v. California*, 343 U.S. 99 (1952).

*Taxation.* The operator of a laundry and cleaning establishment in Memphis, Tennessee, sends ten of his trucks to eight Mississippi counties where his drivers pick up, deliver and collect for laundry and cleaning, and seek new customers. He was required to pay a Mississippi privilege tax of $50 for each driver for the privilege of soliciting business for a laundry not licensed in the state. The state supreme court held that the drivers were "transient vendors or dealers" and hence taxable. The U.S. Supreme Court reversed, taking the state court's word for it that this was a privilege tax for soliciting business.[118] In a long line of "drummer" cases, beginning with the *Robbins* case,[119] the Court had ruled that a tax on the solicitation of interstate business is a tax on interstate commerce itself. Even if the tax is on the picking up and delivery of laundry and cleaning, within the meaning of the "peddler" cases, the Court found that there was an unconstitutional discrimination against interstate commerce, because those working for local laundries were required to pay only $8 per truck.

### 4. INTERGOVERNMENTAL RELATIONS

*State Enforcement of Federal Law.* In an action in a state court under the Federal Employers' Liability Act, the Court held that the question of the validity of a release granted to the carrier by the injured employee was a federal question, to be determined by federal rather than state law.[120] The jury had ruled for the worker on the basis of the evidence, but the trial judge had entered judgment for the carrier on the ground that the employee had been guilty of supine negligence in signing a release. The Court ruled that the right of recovery was granted by Congress and cannot be defeated by permitting the states to have the last word as to defenses. Furthermore, there ought to be a uniform application of the federal act. Four Justices disagreed with that portion of the opinion which held that the employee was entitled to a jury trial as a basic remedy under the federal statute.

*Intergovernmental Taxation.* Section 9(b) of the Atomic Energy Act of 1946 provides: "The Commission, and the property, activities, and income of the Commission, are hereby expressly exempted from taxation in any manner or form by any State, county, municipality, or any subdivision thereof." The Court held that under this section, two private companies who were contractors on a cost-plus basis with the Atomic Energy Commission, and two merchants who sold goods to these contractors, were exempt from state use and sales taxes respectively.[121] The contracts were regarded as "activities" within the meaning of the Act. The statute adopted as a national policy the use of management contracts for the operation of government-owned plants. The Atomic Energy Commission's activities can be performed by it directly or through the agencies of private enterprise. Congress used the word "activities" in a broad sense to include all functions of the Commission. Since this question was covered by the statute, there was no occasion to discuss any problems of implied constitutional immunity.

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[118] *Memphis Steam Laundry Cleaner, Inc. v. Stone*, 342 U.S. 389 (1952).

[119] *Robbins v. Shelby County Taxing District*, 120 U.S. 489 (1887). The rule was reconsidered and reaffirmed in *Nippert v. Richmond*, 327 U.S. 416 (1946).

[120] *Dice v. Akron, Canton & Youngstown Railroad Co.*, 342 U.S. 359 (1952).

*Interstate Comity.* The Alaska Legislature provided for the licensing of commercial fishermen in territorial waters, imposing a $5 license fee on residents, and a $50 fee on nonresidents. The Court by a six-to-three vote declared the statute invalid under the rule of *Toomer v. Witsell*,[122] which held that a state cannot charge different and higher fees unless they are related to higher costs of administration.[123] Relevant sections of the Organic Act led to the conclusion that Congress did not authorize the Territorial Legislature to treat citizens of the states in a manner not permitted to the states themselves in their treatment of citizens of sister states. The Comity Clause of the Constitution therefore applied.

*Full Faith and Credit.* Questions regarding divorce decrees continue to be grist for the full faith and credit mill. In one case the Court ruled that it is to be presumed, in the absence of evidence to the contrary, that a Florida court which granted a decree of divorce had jurisdiction over both parties, thereby rendering the issue of jurisdiction over the cause *res judicata* on a collateral attack in another state.[124] Another case presented a more complicated problem.[125] Sutton divorced Leib in an Illinois state court, with judgment for alimony until remarriage. Later Sutton remarried in Nevada, but this marriage was subsequently annulled in New York. Then Sutton sued Leib for unpaid installments of alimony in a federal district court in Illinois, under its diversity jurisdiction, relying upon her New York annulment decree as determining that her Nevada marriage was void. She contended that the Full Faith and Credit Clause requires Illinois to hold the Nevada marriage void ab initio by virtue of the New York annulment. Both the District Court and the Court of Appeals ruled, however, that since the Nevada marriage was valid in Nevada, it terminated the liability for alimony under the Illinois judgment of divorce. In other words, they gave full faith and credit to the Nevada marriage rather than the New York annulment. The Supreme Court held that as a matter of constitutional law Illinois is free to decide for itself the effect of New York's declaration of annulment on the obligations of Leib, a stranger to that decree. The case was therefore remanded to the Court of Appeals, with direction to determine just what the Illinois rule was. Justice Frankfurter took the occasion to remark in a concurring opinion that this case illustrates what little excuse there is left for the diversity jurisdiction since the *Tompkins* case.[126] If there is no Illinois rule, then the federal Court of Appeals will have to fashion one, but it will be tentative at best because only the Illinois Supreme Court can settle the issue. He preferred to remand the case with instructions to hold it until the petitioner gets a decision in the Illinois courts.

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[121] *Carson v. Roane-Anderson Co.*, 342 U.S. 232 (1952).

[122] 334 U.S. 385 (1948).

[123] *Mullaney v. Anderson*, 342 U.S. 415 (1952).

[124] *Cook v. Cook*, 342 U.S. 126 (1951). See Erwin N. Griswold, "Divorce Jurisdiction and Recognition of Divorce Decrees—A Comparative Study," *Harvard Law Review*, Vol. 65, pp. 193–233 (1951).

[125] *Sutton v. Leib*, 342 U.S. 402 (1952).

One final full faith and credit problem remains to be discussed. Nelson was killed when one of United's airliners crashed in Utah. Claiming $200,000 under the Utah wrongful death statute, Nelson's executor, an Illinois bank, brought an action in the federal District Court in Illinois. The decedent had been a resident and citizen of Illinois. United is a Delaware corporation doing business in Illinois, and suit was brought under the diversity of citizenship jurisdiction. An Illinois statute provides that "no action shall be brought or prosecuted in this State to recover damages for a death occurring outside of this State where a right of action for such death exists under the laws of the place where such death occurred and service of process in such suit may be had upon the defendant in such place." The District Court and the Court of Appeals both dismissed on the basis of the *Tompkins* rule. The Supreme Court reversed,[127] holding that it was unnecessary to consider *Tompkins* problems because the case was controlled by the recent decision in *Hughes v. Fetter*,[128] which held a similar Wisconsin statute to be in violation of the Full Faith and Credit Clause. The only difference Justice Black could find between the two statutes was that the Wisconsin statute barred suit in Wisconsin courts for any wrongful death caused outside the state, whereas the Illinois statute permits suit if service cannot be had in the state where the death occurred. He said: "That Illinois is willing for its courts to try some out-of-state death actions is no reason for its refusal to grant full faith and credit as to others." Justice Jackson, with whom Justice Minton agreed, filed a concurring opinion to argue that the *Tompkins* rule did not apply, because this case did not involve a substantive rule of law, or "rule of decision." And he complained that the Court was silent on the question as to which law shall be applied in this case. Actually, he argued, the Court in effect said that the law of Illinois was wrong, then remade the Illinois law, and then said that the federal court applies Illinois law. He believed that the federal district court could apply the laws of Utah without straining them through the Illinois sieve. Justices Reed and Frankfurter dissented for the reasons given in the *Hughes* case, where both had dissented.

[126] *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938).

[127] *First National Bank of Chicago v. United Air Lines*, 342 U.S. 396 (1952).

[128] 341 U.S. 609 (1951).

# NOTES ON THE THEORY OF POLITICAL OPINION FORMATION

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## I. OPINION FORMATION IN THE POLITICAL PROCESS

The role of public opinion in the political process is more often justified than explained by political theorists. Insofar as contemporary theory offers an explanation, it replaces the primitive democratic notion of "The People as Legislator" with a neo-idealistic conception of public opinion as the "sense of the community" (A. D. Lindsay), an emergent product of the process of public discussion that enfolds the struggle of private group leaders, public administrators, and political representatives to influence the substance and direction of governmental policy.

However, this is not the meaning of the term as used either by the man in the street or by the social scientist. In both popular and scientific language "public opinion" has come to refer to a sort of secular idol, and is a "god-term" to which citizens, scientists, and office-holders alike pay allegiance, partly as an act of faith, partly as a matter of observation, partly as a condition of sanity. The public opinion idol has its high priests, claiming to be expert translators of the oracles of the personified deity. The idol also has its heretics, divided like all protestants into many denominations. The least heretical sect, perhaps, consists of those who postulate a conceptual fiction somewhat resembling the legal relation of "principal-and-agent," except that they recognize that political representatives possess the power to act as trustees as well as agents of their amorphous principal. An agnostic position is taken by some emancipated souls who suggest that the influence of public opinion is best understood by comparing it to the effect of weather on behavior—pervasive, varying by geographical areas, penetrating or enervating, as the case may be, perceived and enforced through our pores and central nervous systems rather than by determinate physical sanctions. The atheistic position is held by extreme advocates of the view that there is no general public opinion common to the community as a whole, but that we have a series of public opinions, ideologies, world views, and thought patterns, corresponding to determinate class cleavages or divisions in society. The most aggressive unbelievers consist of those who replace public opinion with the symbols of "Society" or "Culture," and preach that political behavior is only a derivation of deeper social uniformities resulting from the interaction of personality and culture in the critical stages of maturation when individuals undergo their common socializing experience, integrated, e.g., with the adjustments between parents and siblings in the family, sexual attitudes, the development of moral codes and religious beliefs, educational experience, social role and class position and mobility, and so on.

To modern empirical ears, there is an air of futility and triviality about all controversies over the nature and role of public opinion whose theoretical foundations boil down to religious symbolism, legal fictions, or physiological metaphors. Why not go out and directly ask people how they feel about public affairs? Once the distinction is recognized between legal sovereignty (predominant power in the constitutional system) and political sovereignty (predominant sentiment in the population to which power-holders feel impelled to acknowledge obedience), the question naturally arises as to why it is not possible to reject all this "group personality" and "State-fiction" business, and simply act on the hypothesis that public opinion can be identified directly by asking people questions about how they feel about things. So present-day opinion research, armed with the techniques of sampling, questionnaire-drafting, coding, and interviewing, suggests an operational definition of public opinion as "the distribution in the political community of people's response to issues, personalities, symbols, or events." Classified by significant correlates of opinion such as national origin, race, sex, education, religion, socio-economic status, area of residence, and so forth, the results of opinion surveys are tremendously helpful in discriminating between fact and fancy in the analysis of public wants and feelings, particularly in discriminating group differences.

This gain in clarity, however, is achieved by concentrating on the mass-verbalized-response end of the political continuum. The processes by which persons and groups characterized by different social viewpoints and attributes are actually connected with opinion-leaders and policy-makers are considered to be "another problem." If public policy is defined as "the authoritative program directives and decisions which establish the purposes and limits of action by public officials," nothing is clearer than that public opinion is not identical with policy formation. This is not to say that opinion research has no value. The point is that opinion research seeks to extrapolate public opinion from the complexity of the political process, in which public officials and governmental opinion leaders who assume responsibility for program formulation have already anticipated the consequences of public scrutiny of their views upon their respective positions of responsibility and influence. The political scientist's conception of public opinion demands that research be focussed upon behavior in this more inclusive context, which thus assumes a discrepancy between public and political opinion.

If we, as students of government, are more interested in the larger political process that relates political leadership and popular opinion in the formation of policy, then the character of that relationship ought to be stated. Harold Lasswell sought to identify it by giving the name "political opinion" to the predominant sentiment that supports the power position of political leaders or elites, and "propaganda" to the manipulative techniques by which such policy-makers influence mass attitudes on controversial issues. Greatly influenced by Robert Michels, Lasswell constructed a conceptual model of the political process as a determinate hierarchy of authority, controlled by leaders at the apex who act on behalf of the classes in society from which they are recruited or upon whose ideological support their retention of power depends.[1] In this context, *public opinion* refers to the frequency distribution of attitudes on political subjects in the population at large. Political opinion denotes a psychological relation—a circular or reciprocal process of symbolic interaction—between leaders seeking to acquire or retain power by identifying their public personalities, beliefs, or programs with the beliefs and values of a mass political audience. Policy, originating in the strategic aims and tactical objectives of power-holders, is thus limited by the extent to which the conditions necessary for their achievement can be made to appear natural, necessary, or desirable to the perceptual structure of the audience. Policy also may be modified by the practical necessities of securing a predominant basis of agreement or acceptance on the part of other organized and politically important publics. From the standpoint of any given elite, the relation between public opinion and propaganda may be visualized as a technical division of labor, as follows:

(1) The power-holders' activity of strategic policy determination.
(2) The intelligence operations of gathering, analyzing, and reporting data concerning the ideological and material position of one's allies and opponents and intermediate entities.
(3) The information operations of initiating thematic ideas underlying the presentation of opinion-forming materials, and deriving appropriate channels for release through the mass media.
(4) The managerial function of coordinating publicity with tactical operations at appropriate levels of decision.

The Lasswellian conception of political opinion probably provides the most adequate formulation available of the "instrumentalist" view of the relation between political leadership and public opinion. It clarifies the common theoretical orientation of public information programs in both private and governmental organizations, not to mention military psychological warfare. It is coherent, communicable, researchable. There are two vital objections, however, to generalizing this conception to the total political process. The first point is that the approach is vague about the determinants of policy beyond specifying the class and personality attributes of power-holders at top levels of organization. The problem of factional or multi-group support for political leadership is simply assumed away. Also excluded are (1) the situation and (2) the alternatives of action. The anticipatory effects of traditional popular loyalties and expectations upon the premises of policy-thinking, to say nothing of the conditioning effect of the training process during which leadership capacity and reputation are acquired, are either neglected or dismissed. In spite of its emphasis upon the psychodynamics of power, the "tool" conception of political opinion minimizes the process by which conflicting values inherent in public opinion are internalized within the personalities of power-holders, qualifying their psychological fitness and objective capacity for meeting the institutional requirements of public office.

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[1] Since the foregoing was written, a somewhat more generalized model has been formulated in H. D. Lasswell and A. Kaplan, *Power and Society* (Yale, 1950), Ch. 6, and by D. B. Truman, *The Governmental Process* (New York, 1951), Part I and Ch. 8.

The second objection is even more fundamental. It goes to the question of whether the single hierarchy of authority can be considered as the typical model of political society, or whether the general case consists of a number of competing, relatively autonomous units of political influence, *within each of which the instrumental conception of political opinion may be said to apply.* Obviously, the "limiting" and "directive" functions of public opinion operate differently under conditions when significant differences in policy views are resolved within a single organization effectively monopolizing political influence and within a pluralistic political universe in which *intergroup competition for control of policy is institutionalized* and continually exposed to an open forum of public discussion. Nevertheless, even the brief constitutional history of Soviet Russia has revealed the sensitiveness of Soviet leadership to political opinion (a) during the conflicts between the heirs of Marx and Lenin for the power to interpret the Marxian gospel, and (b) in working out the conflicts involved in coordinating the power elements separately organized in the party, the Soviets, and the functional organs of administration.

In brief, the implications of the foregoing analysis can be summed up in the following propositions:

1. Public opinion cannot be significantly interpreted in isolation from the historical, structural, and interest-group components of the power equilibrium in the community.
2. The conception of politics which restricts political opinion to the role of a mere tool of leadership is but a partial view of the relation between public opinion and public policy.
3. Adequate political perspective visualizes the political process as the conditions under which political leaders compete for positions of public responsibility for coordinating multi-individual or group interests and value conflicts.
4. Stabilized government presupposes a symbolic structure of political authority with which personal and mass loyalties have to be identified; if these loyalties are displaced by revolutionary propaganda, they have to be projected upon another system of legitimate authority.
5. Politics may also be considered in another aspect, as a continuing, functional process of political management, or determination of the purposes and limits of administrative action. Modern political science rejects the notion that political decisions are previsioned or predetermined by an omniscient mind, or by an automatically functioning planning authority, or by an omnipotent socio-political elite whose ideology provides an unquestionable basis for deriving policy in indeterminate situations. Public policy emerges as a composite product of physical force (actual or implicit), economic sanctions, mass public persuasion, and rational discussion, participated in and fostered by influential leaders representing significant elements of group opinion.
6. Analysis of the political management function in relation to the vital problem of mobilizing opinion reveals the *opinion-forming* process operating at successive leadership levels. At subordinate levels, political opinion is constantly being mobilized in support of leadership within each of an indeterminate number of inchoate or potential and organized publics. Each participating agency in policy formation faces internal problems of achieving inner unity and at the same time sufficient recognition from outside publics to establish influence of its own leadership.
7. The higher function of political coordination arises from the objective necessity of

formulating programs of governmental (administrative) action compatible with the maintenance of the structure of political opinion in the community as a whole. Group leaders are forced to recognize the need either for direct collaboration with other influential groups in order to establish a working preponderance of power consistent with a relatively stable, but contingent equilibrium of political influence, or for submitting to the coordinating role of politicians capable of analyzing the requirements and possibilities of the situation and proposing programmatic solutions for intergroup conflict that are acceptable to popular sentiment. The higher function of political management may be monopolized by a single social class or political party, or it may be divided up among several organs of political influence; but it cannot be abdicated without undermining the vital structure of political opinion that enables society to cohere.

## II. POLITICAL RESEARCH AND THE MASS MEDIA

As Lowell and Lippmann pointed out, the significance of the mass media lies in their strategic function of formulating the content and emphasis of issues brought to public attention. While this is a far cry from identifying the content of mass communications with public opinion, nevertheless the leadership role of the media in "structuring the situation" for their reader or listener is of inestimable political importance. As Bernard Berelson has shown, communications media affect public opinion, and public opinion affects the media, in more or less specified ways; but this approach provides no conceptual picture of the press or the radio or the movies as political entities in themselves, with historic organizational, interlapping functional relationships with other centers of influence in society. The hypothesis of political research into the relations of the media to public opinion is that the media should be analyzed as political structures of interest and organization, fulfilling educational and entertainment functions of the highest public importance, controlled and operated by individuals capable of acting both in the public interest and in the pursuit of private or partial group interests.

Considerable research has already been undertaken into the structure of political opinion represented by the organization and control of the opinion industries. Some of the propositions established by such research are the following: (1) the political role of the media varies both with its managers' conception of the role of the enterprise in the life of the community and with the number and type of group interests upon which its financial solvency depends. (2) The conditions suitable for the survival of the mass media as free private enterprises vary with the conditions of competitive entry into the business, freedom of access to sources and facilities for information, and the conditions of responsibility imposed upon staff personnel for approving the content of disseminated materials. (3) The quality of performance of the communications industries in meeting their responsibilities of freedom in a democratic polity depends upon the social origins, group affiliations, and qualifications of competence and job survival acquired by reporters, commentators, editors and publishers in the course of their training and experience. Thus there is already considerable evidence upon which to build further research into the politics of the mass media—the relations of its controlling values to those of the society of which they are a part, the internal and external pressures to which policy-makers at operating levels are institutionally exposed, and the professional and social standards of decision that are applied by administrative personnel in determining content. Available studies of the economic structure of the media constitute only a starting-point for the investigation of the power relationships at policy-making levels of organization.

For most students of politics and government, the significant area of research into the mass media centers upon their functional relationship to the structure of political opinion in the community. One set of questions here has traditionally involved the constitutional position of the media themselves, because their legal rights and obligations are an essential condition of their political influence. Most of the work in this field has been done by constitutional lawyers and political analysts, concentrating upon the permissible conditions that government may impose on the right to do business and upon the judicial sanctions to which the media are exposed for injuring individuals or violating public standards of security and morals. Important as the constitutional value problems are, emphasis in the future will probably be placed less upon judicial doctrines than upon the policy questions involved in the operating relationships between the media and the political and administrative agencies of government. For example, how shall the media permit themselves to be utilized by the President, Congress, the military agencies, the State Department, or the informational services of the great civilian departments, in return for improved access to news and a recognition of governmental responsiblity for advising and shaping, as well as informing public opinion? How should the representatives of the mass media secure access to authoritative sources of program formulation without losing vital elements of independence necessary for public perspective and understanding? To what extent should responsibility be delegated to the mass media for official public information programs, as in the earlier phases of the U. S. Overseas Information Service? Under what conditions are self-government and responsibility in the opinion industries possible so that formally representative, advisory, and consultative relationships can be worked out with governmental organs in the formulation of policy? It is extremely interesting to observe that the newspaper-radio chains which maintain the most continuous clamor about the dangers to press freedom in the growth of government public information activities are increasingly incurring the epithet of "irresponsibility" from public officials, critically thinking citizens, and publicly respected representatives of the media themselves. Irrespective of whether the charge is valid in specific cases, the question remains, how far can responsibility go without losing the public's interest in maintaining the freedom to be irresponsible from the official standpoint? Reliance upon "informal contacts" and the easy distinction between policy-making and policy-explaining are only provisional hypotheses for a tremendous field of experience in the relations between government and the mass media in the formulation and execution of public policy.

The third group of questions in this area relates to public policies that control the media in reporting and commenting upon the policies of the administration in power. Historically, it is well recognized that the mass impact of the opinion industries has replaced the political factionalism of the early "hole-in-the-wall" printing press days with a self-selected label of "independence." For this reason, helpful as content analyses and effect studies have been, it is not likely, even under cold war conditions, that the method of judicial application of quantitative standards of balanced content will become a normal technique of public control or that administrative scrutiny will be established to prevent unlabelled propagandizing in the news columns, where it is probably most effective. Starting from the standpoint of the media themselves, political analysts will focus attention on the organizations, methods, and codes that the industries develop as a matter of self-control for maintaining political neutrality, not so much as a basis for imposing public controls, but in order to understand the internal difficulties faced by the industry members in their own efforts toward self-regulation. The problem for political analysis is to identify the conditions under which the "political independence" claimed by the mass media has meaning; the issue is not so much to prove whether the media are independent or not, but to disclose the pattern of interpersonal and group relationships in the community that explain the actual position taken in the content of editorial or news reporting. As Ruth Inglis pointed out in her brilliant study of self-regulation in the movies, it may well be that the policy of "nonpartisanship" or "independence" in political controversies is only one part of the broader problem of "raising the public taste and standards of expectation"; but, even so, complicated problems of research are involved in analyzing or exposing internal differences within the opinion industries and the varying political alignments within the industry, relationships with special interest groups in the community, and relationships with public regulatory agencies (including congressional investigatory committees). In short, the task for political research into the mass media in the community is to show how public policies affecting the mass media are related to the character of political organization within the opinion industries, the impact of proposed public policies upon the various control groups within the media, and the type of arrangements provided by the media managers for leaders of both governmental and non-governmental opinion seeking public expression of their political views.

# THE GOVERNMENT SECTOR OF THE AMERICAN ECONOMY*

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Americans differ in their views as to the proper role of the government in our economy. It is generally agreed, however, that government—state, local, and national—has become the most important single factor affecting the level of economic activity. The purpose here is not to discuss the arguments for or against a greater or lesser role to be played by government, but to outline the more significant ways in which this role manifests itself in our daily economic life.

The remarks which follow obviously cannot treat in detail the relationships between government and industry. They are intended rather to set forth in overall terms the importance of various governmental programs to the economy as reflected in governmental budgets at all levels. Examples and illustrations are drawn primarily from the federal budget, although the importance of governmental action upon the economy at the state and local level has been too frequently underestimated.

This paper discusses, first, the overall impact of the budget upon the economy; second, the effect of the changing emphasis in the budget upon national security programs in a peacetime period; and, third, the process through which more effective public understanding and control of governmental expenditure can be achieved.

## I. HOW GOVERNMENT INFLUENCES THE ECONOMY

In discussing the government sector of the American economy, economists usually address themselves to figures indicating the total receipts and expenditures at all levels of government. These budget totals themselves tell a significant story. In the fiscal year 1952, which closed June 30, 1952, the federal government spent approximately $66 billion and collected in taxes approximately $62 billion. In the current fiscal year which began last July 1, it is estimated that federal expenditures will rise by about $8.5 billion, with tax receipts increasing by about $6.5 billion. Under the stress of defense emergency spending, the estimate for fiscal year 1954 is for a further increase in federal expenditures. Receipts are estimated at about the same level as the current fiscal year. State and local budgets in total are nearly in balance, with expenditures running at an annual rate of nearly $26 billion, and receipts at more than $24 billion. This means that government revenues at all levels in fiscal year 1953 will amount to approximately 31¢ of every dollar of national income, compared with 12¢ out of each dollar 25 years ago, and 5¢ at the beginning of the century.

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* The substance of this paper was originally presented in an address before the Workshop on Economic Education, Maxwell Graduate School of Citizenship and Public Affairs, Syracuse University, July 2, 1952.

These overall budget totals reflect a multitude of government activities and services affecting the economy of this nation as well as the economies of other free nations. They also reflect a demand by the electorate—irrespective of political party or political doctrine—for a steady expansion of governmental activities.

Significant as these figures are, they tell only a very small part of the story. Government activities affect economic activity in many different ways which are not fully reflected in the totals of receipts and expenditures.

*Trust Funds*. Budget totals leave out of account, for example, the federal government's role as a trustee for several highly important trust funds, such as the Old Age and Survivors Insurance Trust Fund, Unemployment Insurance Trust Fund, National Service Life Insurance Fund for Veterans, and the Civil Service Retirement Fund. At the present time these trust funds take in receipts of about $9.0 billion a year and pay out about $5.5 billion a year. In other words, they are receiving approximately $3.5 billion more than they pay out. While these expenditures and receipts are not legally the same as federal expenditures or direct tax receipts, they have the same kind of impact on the economy as normal budget expenditures and receipts. These transactions, which enter into what is commonly called the "cash budget," have a significant effect on the economy and certainly must receive consideration in any analysis of government expenditures.

*Government Purchases*. Government also affects the economy in its role as a major purchaser of goods and services. If we add the 2.6 million employees of the federal government to the approximately 4 million employees of state and local government, the total is one out of every nine employed persons in the United States working directly for the government. If we add military personnel to the total, the ratio is approximately one out of every six. Government today is also a major purchaser of commodities. For example, the federal government buys over 90 per cent of the output of the aircraft industry, about 60 per cent of the output of the electronics industry, and is the largest single purchaser of the output of the shipping industry. Government purchases of goods and services amount to more than one-fifth of the gross national product.

*Grants, Loans, Guarantees, and Direct Payments*. Government affects the economy in a third way by assisting various groups through grants, loans and guarantees, or through direct payments to individuals. Especially important is the ever-increasing number of examples of the government's acting to take the risk off the shoulders of private enterprise, to subsidize through low interest rates, or to "underwrite" the market. This type of action has become far-reaching, as may be seen from the following illustrations:

1. The Commodity Credit Corporation in fiscal year 1953 will make farm loans totaling $2.2 billion under the price support program.
2. The Federal National Mortgage Association has authority to purchase up to $3,650 million of mortgages insured by the Federal Housing Agency or guaranteed by the Veterans Administration. New commitments of $1.3 billion are anticipated in the fiscal year 1953. About 35 percent of the mortgages purchased will be to finance defense-housing construction.

3. The Defense Production Act authorizes three types of aid to defense industry:
   - a. Section 301 authorizes defense procurement agencies to guarantee loans to defense contractors and subcontractors. New commitments in fiscal year 1953 are estimated at $1 billion.
   - b. Section 302 authorizes the RFC and the Export-Import Bank to make direct loans and to participate in private loans for expansion of capacity, development of technological processes, or production of essential materials—available to borrowers ineligible under regular lending authority of these agencies. New commitments in 1953 will total $260 million.
   - c. Section 303 authorizes the Defense Materials Procurement Agency to guarantee minimum prices and to make advances on purchase commitments for strategic minerals and metals and industrial equipment. New commitments in 1953 will total $60 million.

4. The Veterans Administration guarantees and insures loans made by private lenders to veterans of World War II for the purchase or construction of housing. It also guarantees and insures a relatively small number of business and farm loans and makes direct housing loans to veterans in areas where guaranteed loans are not available at 4 per cent interest.

5. The Housing and Home Finance Agency makes loans and grants to communities to plan and execute projects for the elimination of slums and the redevelopment of blighted areas.

6. The Federal Housing Administration insures loans for the purchase or construction of housing through several insurance programs—for example, the new program of mortgage insurance for homes built in defense-housing areas.

7. The Rural Electrification Administration makes loans, mainly to cooperatives, to finance construction of electrical distribution, transmission, and generating facilities in rural areas. It also makes loans to finance improvements in rural telephone systems.

8. The Farmers' Home Administration makes loans for production and subsistence, for farm ownership and improvement, for farm housing, and for improvement of water facilities in semi-arid areas.

9. Federal intermediate credit banks make short-term loans to farm lending institutions to help them finance production credit needs of farmers.

10. The Reconstruction Finance Corporation is authorized to make direct loans and to participate in private loans to help finance private businesses which are unable to obtain credit on reasonable terms elsewhere. Also, under the Defense Production Act, it makes loans to small businesses for defense purposes.

11. The Federal Deposit Insurance Corporation insures the deposits of all banks entitled to the benefits of insurance under the Federal Deposit Insurance Act. To protect depositors it may also make loans to or purchase assets from the insured banks when such loans or purchases will facilitate a merger or consolidation and will reduce the probable loss to the Corporation. It makes loans and purchases assets to prevent the closing of an insured bank or to re-open a closed insured bank.

12. The Federal Savings and Loan Insurance Corporation guarantees the safety of savings and credited earnings up to $10,000 for each investor's account in an insured institution. It makes loans to, purchases assets of, or contributes to, insured institutions to prevent their default or to restore them to normal operation.

13. Under the tax amortization program, businessmen may "write-off" certain amounts of the cost of expansion of their businesses for government defense work by charging such expansion to "business expenses" for tax purposes.

14. The Public Housing Administration is authorized to make loans and grants to assist local housing authorities to construct 135,000 low-rent public housing units annually over a six-year period.

Many other examples could be added to this list. The programs mentioned, however, will provide financial assistance totaling nearly $17.5 billion to business firms and individuals in the fiscal year 1953. These programs have little direct effect on expenditures since they are reflected in the budget only on a net cost basis, but their economic effect is obviously great.

Unlike the above programs, direct payments or subsidies to business, farmers, and other groups have a substantial effect on expenditures. Payments to farmers for soil conservation practices, subsidies to the merchant marine and the airlines, aid to the newspapers in the form of subsidized postal rates, grants to local communities through navigation and river and harbor and flood control work—these are but a few illustrations of direct federal payments which have an important effect on the economy.

Probably most controversial are payments to individuals under various social security and welfare programs. These payments include old-age and survivors insurance, unemployment benefits, and railroad retirement benefits—which are financed out of trust funds—and public assistance benefits, which are included in the budget totals. Taken together, these payments amounted to $4.2 billion in 1950, and are estimated at $5.3 billion in the current year. The economic effects of these payments are far-reaching, in terms of the number of people who benefit directly from them. For example, the average number of persons receiving public assistance in the current year is estimated at nearly 4.9 million, and about 5 million will receive OASI benefits.

Federal benefit payments to veterans also reach and affect the economic behavior of many people. This year, more than 700,000 veterans will receive education and training benefits, and more than 3 million veterans and their dependents will receive compensation and pensions. Total payments will amount to about $3 billion.

Other direct payments are made, of course, to the several million persons covered by the employee retirement systems operated by federal, state and local governments.

Through its own hospitals and out-patient clinics, the federal government provides medical services and hospital care that are available in some measure to more than 25 million people. Included in this eligible group are 20 million war veterans; 3½ million officers and enlisted personnel of the Army, Navy, and Air Force, and certain of their dependents; 400,000 American Indians and the Eskimos and other natives of Alaska; and nearly 20,000 persons in federal institutions. The federal government operates more than 500 hospitals, which have nearly 20 per cent of all the hospital beds in the United States. In addition, the armed forces maintain many hospitals overseas.

Regardless of what one thinks of the political or social implications of the programs outlined above, their economic effect of stabilizing purchasing power is generally conceded.

*Government Enterprises:* The government affects the economy in another way by directly operating many enterprises producing goods and services. In the current fiscal year the Tennessee Valley Authority, for example, will add new capital investment of $267 million and will spend $122 million for operating expenses. The Post Office Department, the largest single business operation in the country, will spend nearly $3 billion.

*Regulatory Activities.* Through government regulation of the economy, moreover, the government has undertaken programs to protect consumers by controlling certain monopoly-type industries such as power, transportation, and communications. It also has undertaken to protect the consumer through programs such as the Food and Drug Administration, the Federal Trade Commission, and the Securities and Exchange Commission, and other regulatory activities. While these programs involve only a small percentage of total budget expenditures, they have far-reaching effects upon the entire economy.

*Taxation.* Finally, there is the matter of taxation. Besides the amount of taxation, the kind of tax and the manner of its collection are also significant. Every time government spends money, it provides purchasing power for someone; every time it levies taxes, it takes purchasing power away from someone. Whether these revenues are obtained from taxes on individuals, from taxes on corporations, or from excises, or from borrowing, it affects not only the future of individuals and businesses but also the general stability of our monetary and credit structure.

## II. THE POSTWAR BUDGET

The above classification of governmental activity—and many other such classifications might be made—has only one purpose, to provide a better understanding of how government activities affect our economic life. A somewhat more controversial subject is the purposes or objectives which government programs are designed to achieve. This, of course, goes to the heart of the issue of what the government should and should not do.

Governmental activities at all levels have increased sharply in the past fifty years, and I believe that government will continue to play an increasingly important part in our lives, regardless of the political party in control. Whatever may be the motivating factors, the pressures to increase the size and number of activities of government appear to be greater than those which seek to reduce them. I believe it can be safely assumed that government will never again occupy the relatively minor role it played in the economic life of the nation twenty or thirty years ago. The problem confronting us, therefore, is agreement, first upon objectives and, second, on how the machinery of government can be improved to best serve our common needs.

The dominant factor today is the need for national security. In the fiscal year which started July 1, it is estimated that total expenditures will reach nearly $75 billion. More than seventy per cent of this total, or roughly $53 billion, will be required for six major national security programs—military services, international security and foreign relations, atomic energy development, civil defense, ship building, and defense production. Thus, it can be seen that all but approximately $21 billion of total federal expenditures this year will be the direct result of programs designed to deal with the problem of communist aggression. More than one-half of the remaining $21 billion will be required to pay the costs of past wars, in the form of veterans' services and benefits, and interest on the national debt, most of which was created during World War II. This leaves about $10 billion out of the total expenditure of $75 billion for all other federal services.

Paradoxically enough, this $10 billion is the area against which the charges of big government and bureaucracy are most frequently hurled. This is the area, also, to which those who would balance the budget frequently direct their attention.

It can be appreciated how keen the competition is for a greater share of the limited dollars available. We emerged from World War II with a relatively large military program and new international responsibilities, *both* designed to preserve our national security in the uncertain postwar world. We emerged with a debt more than five times greater than before the war, costing us more than $5 billion annually in interest alone. We emerged with 15 million new veterans, many needing hospitalization and eligible for readjustment training and education benefits. These new and enlarged programs created a new base for the federal budget—a base five times greater than it had been a decade before. Consider also that during the war our domestic programs had been virtually closed down. Our economy had been expanding, science and technology had made tremendous strides, and our population had grown, but during these years we had been building up an ever-increasing backlog of needs—needs for more housing, for improved highways, for increased medical research and training, for new natural resource developments, for more adequate measures of social welfare and security. Thus, one of the great problems facing the federal government during the postwar years has been the achievement of an adequate domestic program within the limited number of available dollars.

Yet even within this segment of the budget, only slightly more than one-half is subject to re-allocation or reduction through the normal budgetary process. Much of it is committed for meeting such relatively fixed and predetermined obligations of the government as the contributions to retirement funds for railroad workers and government employees, the recurrent postal deficit, and agricultural price support. This part of the budget provides also for practically all the $3 billion of grants to state and local governments under existing laws—among them the annual grants of more than $1 billion for public assistance and more than one-half billion dollars for highways and airports, as well as the grants for hospital construction for which actual expenditures in the current fiscal year will exceed $100 million. Moreover, this $10 billion for civilian domestic programs includes numerous items which have direct and obvious relationships to the defense effort, including defense power projects, internal security, and protection of harbors and ports.

When part of the $10 billion is set aside for relatively fixed commitments, open-end grants, and obvious defense-related items, civilian domestic programs subject to significant annual revisions constitute a relatively small part of the $75 billion total of expenditures for the fiscal year 1953.

In referring to the limited funds available for civilian or domestic programs in the budget, I do not mean to imply that there is any fixed or arbitrary total available for these programs from year to year. Nothing could be further from the truth. Each individual program must be weighed and compared with a multitude of other programs in terms of its potential importance to the nation as well as its short-run contribution to defense needs and essential civilian requirements. In our rapidly expanding defense economy, the government's jobs of providing postal service, operating the federal airways, patrolling the borders, or collecting taxes and customs get bigger, not smaller. In other fields, the government's efforts must be redirected so that housing, the protection of health, and the operation of schools are particularly assured in critical defense areas.

All these factors have a bearing upon our ability to manage the budget so as to achieve the broad fiscal policies necessary to promote growth and stability in our economy. Most economists now appear to be in some degree of agreement with the principle of compensatory fiscal policy. That is, during depression periods they believe that the government should either spend more, tax less, or both, and that in inflationary periods, on the other hand, the government should tax more and spend less. In effect this means that during depression periods the government is adding purchasing power to the income stream and during inflationary periods it is withdrawing purchasing power from the income stream. Thus, the government tends to compensate for the ups and downs of the business sector of the economy. We must recognize, of course, that there are many practical limitations to this principle. For example, during periods of international tension, such as the present, government spending is determined largely by national security needs. As a result, the fiscal program of the government cannot fully compensate for the economic pressures generated by increases in government demand. During World War II and following the North Korean aggression, the Congress found it necessary to impose direct controls as a means of restraining inflationary pressures.

The Committee for Economic Development has suggested that budgetary policy be based upon a stable structure of taxes and a stable structure of expenditures, endeavoring to achieve a balance at a reasonably high level of employment, allowing surpluses to occur in booms and deficits to occur in depressions. Unfortunately, when we have a fairly large surplus, as in 1948, there is a strong temptation to reduce tax rates and initiate new programs. So it is very difficult to adhere to a policy that involves relying upon the automatic impact of changing levels of business activity.

Most of us have come to realize that in a period of severe deflation it is not in the best interests of the nation to attempt to balance the budget. Any attempt to balance the budget at a time when national income sharply declines will prove self-defeating, because the very attempt to take out more taxes from the pockets of consumers who have lower incomes than they had before reduces still further the amount they have to spend and aggravates the economic decline. This used to be a radical idea, but it is becoming an accepted fact.

For example, in 1949 a special subcommittee on monetary credit and fiscal policy of the Joint Committee on the Economic Report, headed by Senator Douglas, after extensive studies explicitly recognized that annual budget balancing was not a feasible objective in all types of economic conditions.

We have to strive for some kind of a budgetary balance over a longer period, recognizing that deficits are inevitable in depressions and periods of national tension. It would be convenient if we could stop at this point and simply say, "budgetary policy stimulates the economy when we have deficits and slows down inflation when we have surpluses." But the fact is that a balanced budget can readily be either inflationary or deflationary. The economic effect varies depending on the specific kinds of expenditures and taxes, i.e., what income groups pay the taxes, or what income groups get the bulk of the benefits from the expenditures.

With respect to expenditures, payments for public assistance grants, for example, will give a far more direct stimulus to the economy than payment of interest on the public debt, which goes chiefly to financial institutions or relatively high income groups. With respect to revenues, to take an extreme case again, a sales tax, or an excise tax, will retard business much more than will an estate tax, the effect of which is very indirect and not too definable.

In measuring the economic impact of federal financial transactions, the so-called "consolidated cash budget"—which reflects the actual flow of money between the government and the public—is regarded by many economists as a better tool than the conventional budget. The consolidated cash budget includes the transactions between the trust funds and the public, which are not reflected in the conventional budget. Since the trust funds have been taking in more money than they have been paying out—building reserves for future liabilities—the difference between the cash budget figures and the conventional budget figures is substantial. For example, in the seven postwar fiscal years 1947 through 1953, the conventional budget shows a *deficit* estimated at $2.2 billion, while the "cash" budget shows a *surplus* estimated at $20 billion.

## III. CONTROL OF GOVERNMENTAL EXPENDITURES

Among the governmental mechanisms through which these various types of needs are evaluated and determined, the most important is the annual budget process.

There is a general misconception of the kind of information necessary to evaluate a federal budget. The size, scope, and direction of the President's budget are not determined by a multitude of unrelated decisions reached on individual items and activities. The question of how much money is needed to run a given activity efficiently has to be asked about every budget request, but it is not the major decision that has to be made—and even this question cannot be decided on a piecemeal basis. More basic is the question whether each activity shall be conducted at all, and if so at what level. For any particular program, this question can be answered only in the perspective of such broad considerations as the general outlook for expenditures and revenues, economic trends, the requirements of law, and many other factors.

These are the kinds of questions encountered again and again in the preparation of the budget. Long before detailed estimates are prepared by the agencies, meetings have been held to identify problems and discuss the prospects for each major program, forecasts have been prepared to indicate the probable totals of revenues and expenditures and their relationship to the general economic outlook, appropriation ceilings have been determined for the larger agencies, and general policies have been defined. The agency requests are reviewed in the light of these basic decisions and policies as well as the requirements of existing law. Such considerations determine the broad outlines of the President's budget.

Certainly the Congress in its review of the budget should bring to bear, both with respect to the total and each individual part, all possible information that will help it to obtain a full understanding and independent judgment of the budget requests submitted by the President. I am inclined to think, however, that this is not simply a matter of increasing the quantity of information placed before the Congress. Instead, it would seem to be a matter of the relevance of information. That is to say, instead of knowing more about the lesser detail of budgetary proposals, the Congress might want to know more about the issues and problems that determine the budget in its main elements and as a whole.

Fortunately, the Congress already has available for its use a sizeable amount of information which has a direct bearing upon the budget and the major considerations which underlie it. This available information includes the estimates and justifications presented to the Appropriations Committees; the detailed work of the staffs of the Appropriations Committees; the valuable audit reports, as well as other reports and data, of the General Accounting Office; the various reports produced by the staff of the Committee on Reduction of Nonessential Expenditures; similar reports from the staff of the House Committee on Expenditures; the factual research available through the Legislative Reference Service of the Library of Congress; the information pertaining to the budget developed by the Joint Committee on the Economic Report; the technical work of the Joint Committee on Internal Revenue Taxation; and the factual data furnished by the Bureau of the Budget.

Of great importance in any consideration of expenditure control is the review of the fiscal effects—the effects upon subsequent budgets—of authorizing legislation which is introduced and considered at any given session of Congress. At present, such a review is not systematically and uniformly provided in either house. It would seem fundamental that in appraising legislation from the standpoint of public policy, the Congress should do so with as full a knowledge as is possible of its effect upon the future fiscal position of the government.

A careful budget review, however, is not enough. We need to review again the question of improved legislative procedures at all levels of government. While there have been many improvements, the roll calls and quorum calls in the national Congress still take up 10 per cent of the entire time of that body. The

Congress last year enacted a total of 411 private relief bills—nearly twice as many private bills as public bills—many of which could have been handled under a delegation to the executive branch. We need higher salaries and better staff for members of our legislative bodies. What we particularly need is a careful reexamination of the machinery for the review of fiscal policy and the budget. We must also find additional ways to improve the organization and management of the administrative agencies. I think that we need to establish from time to time a commission along the lines of the Hoover Commission. No commission in itself can provide a simple formula for economies or reductions in the budget, but it can provide the basis for better public understanding of the problem, an understanding which is the essential prerequisite to major reforms or improvements in the administration of governmental programs. We need to provide better incentives for employees through awards, through more adequate salaries, and through improvements in the merit system.

Finally, steps should be taken to increase citizen interest and participation in government. No document has more implications for all of our people than the budget itself. Yet, for the fiscal year 1952 only 1,000 copies of the Budget Document were distributed to the public. This means that for a state the size of Ohio not more than 50 copies of the budget were available. Three years ago the Bureau of the Budget began the publication annually of *The Federal Budget in Brief*, a small document of less than 50 pages, in which it has undertaken through the simple devices of charts, tables, and short narrative descriptions to present the basic facts with respect to where the money is spent and where it comes from. The response to this document has been excellent, but we still need to make available to the public more factual data. There is still too much misinformation with respect to the budget, some of it coming from individuals and groups who have not been too careful to set down the facts clearly. In most cases, however, it has come from individuals who do not understand the complex make-up of this important document.

The experience of the Bureau of the Budget over several decades demonstrates that there can be no simple, easy, single-shot approach to economy, efficiency, and restraint in the fiscal operations of the government. This is a goal that has to be achieved through continuous, unremitting, intensive review of both the operations and the programs. The operations must be watched to see that they are managed carefully and competently. The programs must be watched to see that they are the right programs, each in a balanced relationship to the rest of the government program and to the economy as a whole. There is no single answer to the question of controlling expenditures—there can be only a series of separate, considered judgments on a series of individual items. It is most important that these shall be well-informed judgments, consistent with one another and with the general military, fiscal, and economic situation.

# SOME ASPECTS OF THE SECURITY PROBLEM IN THE MIDDLE EAST*

**HALFORD L. HOSKINS**
*Library of Congress*

On April 4, 1949, the representatives of twelve European and American nations, assembled in Washington, D. C., affixed their signatures to an instrument called the North Atlantic Treaty. This was the crucial step in the formation of one of the most impressive alliances ever entered into by sovereign states. The pact bore testimony to the rise of a new menace in the world, a menace spearheaded by a specious form of communism and powered by the Union of Soviet Socialist Republics, whose postwar activities left to the free nations no practicable alternative other than to seek safety in a regional collective security pact.

The North Atlantic Alliance, as its name implied, was designed primarily to make provision for the defense, in time of emergency, of the nations grouped about the North Atlantic basin. The logic in this lay in the circumstance that about the shores of this oceanic basin were grouped most of the nations whose industrial potentials and whose institutions constituted the only serious challenge to world domination by the Soviet Union. Certainly in April, 1949 the Soviet threat was not confined to the North Atlantic area, nor was the pact confined to those limits. The inclusion of France in the alliance necessarily involved the inclusion also of its Algerian department. Strategically speaking, France—with Algeria—represented the Mediterranean approximately as much as it did the North Atlantic area. Italy also was embraced by the treaty. Largely shut off from other parts of continental Europe by the Alps and situated well away from the North Atlantic area, Italy was definitely Mediterranean in character. Thus, the North Atlantic Pact contained within its own original structure evidence to the effect that security in the North Atlantic area called for defense arrangements at least in the western Mediterranean. This was tacit recognition of the fact that, in the contemporary world, security is indivisible. It reflected the realization that security in the North Atlantic or in any other specific area necessitates coming to grips with a world menace whereever it may choose to appear. Indeed, no sooner was the North Atlantic Alliance a functioning organization than it was faced with the necessity of extending the bounds of its direct concern eastward to embrace other Soviet pressure areas.

Historically, imperial Russia, whose mantle of external policy now is worn so fittingly by the Soviet Union, aimed at expansion southward—toward the Mediterranean and the Persian Gulf—rather more consistently than in any other direction. Since 1696, when the expanding realm of the Tsars reached the northern shores of the Black Sea and incorporated the town and port of Azov, one of the most persistent themes in international relations has been supplied by the efforts of this great northern power to reach the Mediterranean and the Persian Gulf on its own terms. Except for the timely assistance rendered to the waning Ottoman and Persian Empires by Great Britain, sometimes reinforced by other European states, the political map outlines of southern Europe, southern Asia and parts of Africa indubitably would not have been those now familiar to us.

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Until after the North Atlantic Pact had begun to function, the United States had no coordinated policy applicable to the Middle East as a whole. Its previous postwar contacts with that area had taken the form of *ad hoc* measures not yet bound up with long range national policy. While undoubtedly it had been conditioned to respond to needs arising beyond the defined limits of the Atlantic Pact by having participated in the development of a wartime supply route to Russia through Iran and in the final campaigns in North Africa and the Mediterranean, the assumption by the United States of responsibilities within this area resulted from the practical requirements of leadership in the postwar world. In its efforts to establish situations of strength in the Middle East, the United States was under the necessity at the outset of proceeding more or less in the role of deputy of the powers which, although enfeebled by war, still maintained recognizable spheres of influence in the area. France and Italy no longer maintained important holds on the Levant, but the residual interests of Great Britain were still extensive. As early as 1946, before any serious thought had been given to the need for a North Atlantic Alliance, Soviet and satellite pressures on Greece, Turkey and Iran led to the granting of emergency forms of United States economic assistance to those states. The British announcement in February, 1947 that, owing to a disastrous state of economic affairs at home, all forms of British support for Greece would have to be suspended at once, called for American policy decisions of a more fundamental sort. Time being of the essence, hasty conferences of American political and military chiefs ended in the conclusion that, on security grounds alone, the United States could not afford the risks involved in an extension of the Soviet sphere to the Mediterranean. "It must be the foreign policy of the United States," said President Truman, "to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures. . . ."

The pronouncement, coupled with a request to the Congress for an appropriation of $400 million for military and economic aid to Greece and Turkey and authorization for the sending of technical missions to those countries, opened up a new era in the relations of the United States with outposts of the Middle East. Although primarily defensive in character and limited for the time being as to geographical area of application, the doctrine set forth for congressional approval contained overtones that were neither defensive nor local in character. Practically speaking, an ultimatum had been issued. While it contained more of bravado than of promise, since little or no military force could then have been mustered in support of it, the President's pronouncement was a precursor of successive steps each of which was more far-reaching than the last, until the United States was deeply committed for the whole of the Middle East.

Further aid for Greece and Turkey—and incidentally Iran—was continued in 1948. In October, 1949 came the enactment of the Mutual Defense Assistance Act, conceived as a means of promoting the interests of the free world apart from, but in relation to, other forms of assistance to the same end, namely, the Economic Recovery Program, the Point Four or Technical Assistance Program, and the North Atlantic Treaty program. By the Mutual Security Act of 1951 all of the methods previously developed for the promotion of the security interests of the United States and its allies were brought into closer relationship. Under this Act, for the fiscal years 1952 and 1953, sums totaling more than $13 billion were appropriated. Of this, substantial amounts were earmarked for direct aid of one kind or another not only to Greece, Turkey and Iran, but also to Egypt, Iraq, Jordan, Lebanon, Syria, Saudi Arabia, Yemen and Israel. It was natural that the assumption of these responsibilities of an economic nature were followed, as need arose, by political responsibilities, as well.

British policy in this area, meanwhile, had reached a state of bankruptcy. It rested still, as in earlier times, on a lively realization that the Middle East is strategically vital as the barrier between the Soviet Union and the earth's richest oil regions, the vast resources of the African continent, and the major routes of communication to South and East Asia and to the commonwealths in the antipodes. At the close of World War II, British Ministers believed that, despite many wartime changes, British influence in the area could be maintained through two organizational channels: the Arab League, reinforced by treaties with Egypt, Iraq and Transjordan, as the political and military basis of stability, and the Middle East Supply Center, as an agency through which depressed populations might be brought with economic aid to the stage of development where "princes and pashas" could be dispensed with. Within the next five years these assumptions were found to be fallacious. Owing particularly to troubles growing out of a "National Home for the Jewish People" in Palestine, the Arab League, originally formed under British sponsorship, became embittered and ineffectual. Egypt, the bell-wether of the group, inaugurated a campaign aimed at the canceling of the 1936 treaty and the ousting of the British from both the Suez Canal zone and the Sudan. The Middle East agency in these circumstances met only with frustration.

The single source of hope in attaining British Middle East objectives in the future thus appeared to lie in the growing disposition of the United States to share in British aims and objectives and to make available both the financial and the physical means for the implementation of policy. Obviously this would call for close Anglo-American understanding and cooperation in building up the economies and the military strength of the Middle East states, in reducing the animosities growing out of the Arab-Israel war, in resettling the Arab refugees, and in creating conditions in which forms of aid could be made acceptable to the indigenous populations. It would also call for a miracle: the miracle that, even if British and American objectives should prove to be substantially the same, complete agreement and cooperation could be maintained as to the methods to be employed in pursuing them. British Government heads must have been aware of the risks inherent in seeking cooperation from a powerful ally far removed from and relatively a stranger to the scene of action—an ally, moreover, upon whom the United Kingdom was largely dependent for its own economic recovery. Yet the only visible alternative would have been to withdraw as completely from the whole of the Middle East area as had been the withdrawal from Greece in 1947 and Palestine in 1948. To the extent that hope still remains that the countries of the Middle East can be retained within the sphere of influence of the free world, the course chosen by the British would appear to have been judicious. The event has borne out the usual human experience, however, that miracles are extremely rare and can not confidently be counted upon.

It was natural that, once having absorbed the British doctrine that no comprehensive plan of security would be effectual without some provision for the Middle East, American planners should plunge boldly into schemes for incorporating that area into western defense plans. They were the less restrained in their efforts to achieve desired results in an unfamiliar environment because of a rather widely prevalent suspicion that the British, because of preoccupation in characteristic ways with their own national interests, had failed signally to maintain an adequate working basis for a mutual security scheme.

Illustrative of contrasting views was the case of Turkish-Greek candidacy for full membership in the North Atlantic Treaty Organization. At the time of the signing of the North Atlantic Treaty the Greek and Turkish foreign ministers expressed the hope that a comparable Mediterranean pact might be formed to extend the zone of joint defense into the Middle East. The western powers did not view that proposal as practicable, but in the autumn of 1950 both Turkey and Greece were made consultants to the North Atlantic Treaty Organization on matters of Mediterranean defense. As the Korean war progressed, however, Turkey became increasingly concerned over its exposed position on the frontier of the Soviet Union and inaugurated a campaign aimed at achieving full membership in NATO. Similar representations were made by Greece. United States officials, coming more and more to regard Turkey as a cornerstone in any comprehensive scheme for the security of the free world, reached the conclusion in the early months of 1951 that it would be the part of wisdom to accede to Turkish wishes. This conclusion was stoutly opposed at first by several members of the Alliance, notably by Great Britain. British spokesmen pointed out that the Treaty of Mutual Assistance of October 19, 1939 between Great Britain, France and Turkey contained such assurances for Turkey as were needed from the West. They submitted that the proper role for Turkey was to serve as the keystone in a Middle East, not a North Atlantic, defense structure. These arguments did not weigh heavily with Turkish leaders nor with their American sponsors. When, in September, the Atlantic Pact Council met in Ottawa, representatives of the United States were able to secure a unanimous agreement that both Turkey and Greece should be invited to join the Pact. In February, 1952 the formalities of extending the Pact were concluded. At the latitude of Istanbul the defense zone jointly guarded by fourteen states then extended three-fifths of the distance around the globe.

The eastward extension of the Atlantic Pact into the Middle East by way of Greece and Turkey did not end the differences in the points of view of the two principal Allies on Middle East issues. The efforts to provide for the military defense of the area not infrequently provided occasions for the display of contrasting views arising from differences in experience, in criteria, in analyses of situations, in methods of approach, and—to some extent—even in objectives. This is well illustrated by efforts to apply the "strategic concept" of the North Atlantic Treaty Organization to the southern flank of the European defense area. Both political and military considerations were bound up in the lively controversy concerning the high command of NATO forces in the Mediterranean corridor. This question, no doubt, had been implicit all along in the extent to which naval power and naval bases in the Mediterranean and British commitments in the countries of the Middle East entered into the objectives and the calculations of the North Atlantic Treaty Organization. The issue first became acute in March, 1951 upon United States insistence that an American naval officer be given the principal naval command in the Mediterranean—a proposal stoutly resisted by British authorities. The latter argued that British naval tradition called for leadership in Mediterranean waters and that, since NATO defense plans in the Middle East area rested to a very large extent on British treaty relations with Middle East states, it was essential that a British officer be placed in chief command for reasons of prestige, if no other. United States spokesmen contended, however, that American security interests in the Mediterranean had become second to none, that only an American supreme commander in the area could prevent jealous rivalry with the French and Italians, and that an American officer could work the more effectively with supreme headquarters in Paris. The decision substantially in favor of the United States contention after many months of wrangling was in keeping with United States sponsorship of Greece and Turkey for Atlantic Pact membership and with measures being taken for American development and equipment of British and French bases in North Africa, the Mediterranean and in the Middle East countries.

On February 1, 1951 it was announced that the United States, on the basis of studies by the NATO military committee, had requested permission from Great Britain to station war planes—fighters and bombers alike—at fourteen British airfields in the Mediterranean and Middle East. As far as the British Government was concerned, there was no lack of willingness to accord facilities to the United States at any airfields or ports under their control anywhere within the defense area. But Britain was sovereign only at Gibraltar, Malta and Cyprus. Other bases were held under the terms of treaties and agreements with the indigenous states. Consequently, whatever its virtues as a feature of the strategic concept for the Middle East, the announced plan could not quickly be realized. Egypt already had determined upon the liquidation of British bases in that country. Iraq was fearful that the use of treaty bases in that country might provoke retaliation by Russia. Jordan had become increasingly disposed to place strict limits on its treaty concessions to Britain. King Ibn Saud was hesitant with respect to the further development by the United States of the air installations at the Dhahran base in the heart of the Persian Gulf oil area, originally constructed during World War II. In February, 1951 he was willing to agree only to a six months' extension of American privileges at that place. Israel already was on record as opposed to any foreign controlled and operated base within its borders. The Turkish Government, too, had concluded that, while advanced air bases ought to be constructed and fully equipped, it would be impolitic in time of peace to place their control in the hands of a western power. Under these circumstances, there was no lack of agreement between British and American planners with respect to the great need for the further extension of a defense system that would contain strategically located, defensible positions which would be available to at least one of the great powers for a considerable time to come under any foreseeable conditions.

The need for a well-knit Middle East defense organization beyond the expanded periphery of the Atlantic Pact obviously was called for. As the Arab-Israel war had amply demonstrated, this was not to be looked for in the Arab League. However, as Greece and Turkey came to receive guarantees of aid from the West and were accorded associate, and finally full, membership in the Atlantic Pact, the Arab states gave thought to the steps which they might be able to take independently with any prospect of acquiring from western countries the arms and armaments which they so conspicuously lacked. In October, 1949 the Political Committee of the Arab League reported agreement on the principle of setting up a new Arab collective security pact and Egypt presently assumed the task of enlisting the members of the League in this undertaking. While this was accomplished in the course of the next three years, the western powers could glean little satisfaction from the fact inasmuch as the principal objective of the new military association so clearly was the creation of a stronger united front against Israel rather than the resistance of aggression from the Soviet Union.

The closing of the security gap between Turkey and the eastern shores of the Mediterranean, on the west, and the Himalayas, flanked by Pakistan and India, on the east, thus called for an area organization along lines quite different from those of the Arab security pact. In this the guidance and support of the NATO powers, specifically including both Great Britain and the United States, and provisions for the inclusion at some point of Israel and Iran as well as the Arab states, would be indispensable. From these considerations emerged the idea for a new Middle East association which might enable Great Britain to find a satisfactory solution for the continuing controversy with Egypt over the former's retention of a base in the Suez Canal zone and bring Egypt—and, by implication, the entire Arab group of states—within the western defense perimeter.

The idea materialized in the shape of two formal instruments, drafts of which were transmitted to the Egyptian Government on October 14, 1951. The first of these was a four-power proposal by the United States, the United Kingdom, France and Turkey for an Allied Middle East Command. "Egypt belongs to the free world," ran the introductory section, "and in consequence her defense and that of the Middle East in general is equally vital to other democratic nations." In the pact envisaged, Egypt was to occupy a place of equality with the proponents. Australia, New Zealand and the Union of South Africa were to be associated with the organization and provision was made for a relationship—undefined—with the North Atlantic Treaty Organization. A technical annex to this document outlined the circumstances under which, in the event of Egyptian acceptance of the proposal, Great Britain would be prepared to hand over to Egypt its bases held under the treaty of 1936. The second draft instrument conveyed by the British Government consisted of proposals with respect to means of reaching an Anglo-Egyptian agreement on the future administration of the Sudan and the use of the Nile waters.

It quickly became apparent that in tendering these proposals the powers had reckoned without their host. A more untimely moment, in view of the temper of Egypt, could hardly have been found. Failure to include that state in the preliminary discussions leading to the four-power proposal proved to have been a serious blunder. These errors, in Egyptian eyes, were compounded by assurances given to Israel at the same time that, in the working out of the Middle East Command, Israeli interests would be duly cared for and by ill-timed statements by the British Governor General of the Sudan with respect to his intention of resisting any unilateral attempt to alter the working of the Sudanese Condominium. Egyptian response to the joint overture, consequently, was instantaneous and dramatic: the four-power proposal was rejected outright. Within another twenty-four hours the Egyptian Parliament had unanimously adopted measures abrogating the treaties under which Great Britain held sway in the Sudan and maintained bases in the Suez Canal zone. A train of events had been put in motion which resulted presently in armed clashes and in complete frustration for the time being of the Middle East security plans of the western powers.

To have accepted this defeat as final would have been to jettison an important part of the comprehensive program on which the security, possibly the survival, of the free world depended. Consequently, on October 24, 1951, a Department of State announcement gave notice of the intent of the United States to estabish a Middle East defense command regardless of Egypt's refusal to join. Plans were being worked out, this stated, for the cooperation in this task of the United States, Britain, France, Turkey, New Zealand, Australia and the Union of South Africa. Once plans were complete, invitations to membership might be extended to the Arab states and Israel. This statement was amplified on November 10 by the publication of an eleven-point statement by the Big Three powers and Turkey purporting to be the framework of a program determined upon to secure the Middle East against "outside aggression." This four-power plan as issued was "a peculiar document drafted to meet a peculiar situation." It was studiously vague on various points, notably on any relationship that the Command might bear to the North Atlantic Treaty Organization. However, as it coincided with the inauguration of a $160 million program of economic and technical aid to Middle East countries, it may have contributed momentarily to the hampering of renewed efforts on the part of Egypt to vitalize the Arab security pact.

During the succeeding months one plan modification after another, originating in London or in Washington and generally representing joint consultations, was brought forward in the not-overly-confident hope that one might prove to be acceptable to Egypt and the Arab states. By August, 1952 the Americans were disposed to discard plans for a "command," implying the concentration in the area of armed forces, in favor of a defense "organization" with functions limited to liaison with the native states and consultation on matters of defense. The British preferred a "going concern" as one more likely to bring in the Arab states and Israel than any paper scheme. The upshot was a partial compromise. The Middle East Command project was abandoned in favor of a Middle East Defense Organization sponsored by the United States, Great Britain, France and Turkey, together with Australia, New Zealand and the Union of South Africa. MEDO, consisting essentially of a committee of generals to plan the defenses of the area, would be concerned also with the issues making for instability.

A significant feature of the plan as made public was the British proposal to establish MEDO headquarters on the island of Cyprus. No clearer indication could have been given of the importance attached to the eventual inclusion of Egypt in the Organization and of the necessity of making fundamental concessions to that end. Obviously little was to be gained from the continuation of a feud which necessitated the retention of large armed forces at considerable cost in the Suez Canal zone for possible employment against the Egyptians themselves. Intimations already had been given that, once Sudan matters had been settled satisfactorily, British forces would be withdrawn by stages from the Canal zone. As the year 1952 passed along it became increasingly probable that, as a central base for Allied operations in the Middle East, the Suez Canal zone would prove to be more of a handicap than an asset. However determined the British may have been at an earlier period to retain the base, its evacuation had become a matter of time and opportunity. Since the Egyptians could not have misinterpreted these indications, their unwillingness to defer to British representations on Sudan issues is readily understandable. Time clearly was on the side of Egypt in the Anglo-Egyptian controversy. Hope was not abandoned for MEDO, meanwhile, although the outlook for the inclusion of both the Arab states and Israel in any defense organization in which the western powers would be entitled to introduce military forces into the area in time of emergency admittedly is bleak.

In both World War I and World War II the strategic bearing of the Middle East on power issues elsewhere in the world was clearly demonstrated. In both conflicts the western allies possessed bases and starting points within the area itself. In both these proved to be of vital importance in shaping the outcome. Seven years after the close of World War II, with a cold war pointing the way toward a possible third world war, none of the western powers possessed a secure foothold on continental ground within the area. Apart from Turkey, which had unqualifiedly cast its lot with the West, the Allied powers could count on little aid of any kind from within the area itself, and this at a time when Middle East oil resources had become vital to any plan of free world defense. Iran, which not too willingly had played a prominent part in enabling the Soviet Union to stem the German onslaught in World War II, had become essentially a hostile country, almost as likely to contribute to the advance of communist power as to be of any service to the free world. The treaty relationships which still subsisted between Great Britain and Egypt, Iraq and Jordan were of increasingly doubtful value as time passed. In these and in most of the other Arab states dislike of the West appeared to be gaining over fears of the designs of Communist Russia. The fact that Israel had decided in some circumstances to cast its lot with the West might one day prove to be fortunate. In the meantime, its very existence had much to do with the major problems confronting the Allies in the area.

Under these circumstances, Allied strategy as applied to the Middle East has required further examination. One of the leading questions necessarily brought under consideration has had to do with the extent to which Cyprus can be made to serve as a main base and pivotal point in a defense system in place of the Suez Canal zone. In this respect Cyprus does possess certain advantages, some not foreseen when Great Britain took over the island from Ottoman rule in 1878 as a "*place d'armes.*" Its principal claim to virtue as a base, of course, lies in the fact that it is the only bit of territory now possessed by any of the western Allies within the compass of the Middle East which can be held indefinitely without serious injury to relations with any state or group of states. Its fitness for use as a principal military-naval base is reasonably good. Upon the expenditure of substantial sums on harbor works, the ancient port of Famagusta is becoming an acceptable substitute for Alexandria in Egypt and for Haifa, once in British-mandated Palestine, now in Israel. The median plain and the dry climate of Cyprus make it adaptable as an air base. Its geographical location, too, is advantageous with respect to possible objectives in time of war. Moscow is only 1500 air miles distant; Baku, the Soviet oil center on the Caspian Sea, lies only 1000 miles away; Rostov, a main industrial center on the Don River, is distant 900 miles; Sverdlovsk, a new center of Soviet heavy industry in the Ural Mountains, can be reached at a distance of 2000 miles; the oilfields of Rumania are as near as 800 miles.

There are serious limitations in the plan of substituting Cyprus for the Suez Canal zone, however. Its principal shortcoming lies in the fact that under no imaginable circumstances can it effectively protect and control the Suez Canal itself. The complete withdrawal of British armed forces and technical personnel from immediate proximity to the waterway, if carried out, thus will necessarily open up an entirely new era in the strategic calculations of western countries. British protection and political control of the Canal, after all, have been essentially of an international nature. Under the nine-power Suez Canal Convention of 1888 and an accompanying reservation, Great Britain to all intents and purposes became the agent of the world community for the political supervision of the waterway, a position still provided for in the 20-year Anglo-Egyptian Treaty of 1936. It is inconceivable that the transfer of guardianship to Egypt, to be followed within a relatively few years by complete control of the commercial operations now carried on by the Suez Canal Company, would insure to the same extent the uninterrupted use of the Canal at all times, even if Egypt should become a member of a western-sponsored Middle East defense organization. Already there have been significant instances of Egyptian interference with Canal traffic where national interests were conceived to have been concerned. The transformation of the Suez Canal from a principal intercontinental maritime highway into a territorial waterway inevitably will give local national interests a priority over those of the international community.

Thus, the assumption of complete control of the Suez waterway by Egypt potentially will add thousands of miles—the additional distance involved in passage by way of the Cape of Good Hope—to the maritime distance between points west and points east of the Isthmus of Suez for naval operations and for commercial traffic alike. In view of the possible interruption of oil transportation by pipeline from the great Iraq fields or from the Persian Gulf to the Mediterranean owing to political upheavals or military operations, any limitations placed on the unrestricted commercial use of the Suez Canal instantly will affect the security of the industrial countries of western Europe whose economies are linked so closely with fuel supplies from the Middle East. But the erection of any barriers at the Suez Canal has other and equally far-reaching implications. Under British control the Suez Canal is not only a maritime but an air route, both actually and potentially, between West and East. Whereas under normal conditions and under license commercial airlines, and ordinarily military planes as well, are permitted to operate on the most favorable intercontinental routes through the Middle East, the rise of political tensions could result in the canceling of such privileges at any time. While the physical inhibiting of air navigation is almost impossible to countries deficient in fast planes and anti-aircraft devices, effective barriers still can be erected in terms of unfriendly diplomatic relations. When instances of aerial trespass are likely to be reflected in attitudes throughout an area such as the Middle East, protests may be fully as effectual as military equipment.

For these reasons, the final ending of British sway in the Suez Canal zone will make possible a return, practically speaking, to the time when the Ottoman Empire interposed a barrier between the western world and the countries of the farther East. Aden, long a British key position on the Arabian coast commanding the mouth of the Red Sea, will have lost much of its meaning. The oil resources of the Persian Gulf will be less secure and potentially less accessible. The Sudan, whatever its political future, will find itself relatively remote from the western world. Members of the British Commonwealth in distant parts will be even more distant. Australia and New Zealand presumably will have no less interest in a Middle East Defense Organization, but will occupy a somewhat altered relationship to it. A strategic concept in which the Suez Canal is no longer under international control and no base available to western powers remains within the Canal zone would appear to be fraught with handicaps. For these, Cyprus offers no remedy, nor does the presence of Turkey in the North Atlantic Treaty Organization.

The reasons for such an unpromising situation undoubtedly have been many. Some derive from circumstances of an historical nature, others from events, policies and conditions recent or current. Many of the existing differences in outlook between western powers and the Arab-Iranian states stem in one way or another from the grafting of the spirit of modern nationalism upon the ancient trunk of Islam. The fruits of this union seem strange to western eyes and sour to western tastes. Among these fruits is lasting hostility toward the Jewish state of Israel and animosity toward the nations regarded as having collaborated in Israel's establishment. The reluctance of Great Britain, traditionally a great imperial power and even recently the ruler of a large part of the Arab world, to surrender its remaining footholds in Egypt and the Sudan contributes to Arab doubts as to British aims and purposes. The more recent activities of the United States as an ally of Great Britain and as a sponsor of Israel are suspect. There is considerable doubt as to the real motives behind the Point Four program—doubt augmented by the zeal with which economic and technical aid is proffered while the arms and armanents ardently desired are withheld. The fate of any national policy in the international field rests largely with its attractiveness to those toward whom it is directed. Unless policy is to be implemented by force, those who seek must be prepared to negotiate in terms intelligible to and esteemed by those from whom advantage is sought. Mutual security depends upon the mutuality of the ends sought and the means proposed.

At least until this precept is fully learned and acted upon by western nations, the Middle East will continue to be a problem area. Many of those long acquainted with the criteria and the institutional life of the peoples of the area hopefully express the opinion that their prejudices toward the nations of the West are not yet so deeply ingrained as not to be susceptible of neutralization and that there is still the possibility of enlisting them in the effort to gain free world security through cooperative endeavor. In the idiom of the East, *inshallah* that may come to pass. Those charged with the task of pursuing this objective, however, at best will find it a difficult assignment. The Middle East is so situated relative to the principal habitable areas of the world that at all times there is bound to be international competition for predominant influence in its constituent countries. In view of the fundamental needs and deficiencies of the area, such competition is very apt to cause confusion and disturbances among the indigenous peoples. Considering their long experience with the methods employed by great states bent on consolidating their positions and advancing their own interests in the Middle East corridor, there is little occasion for wonder that the peoples of the area, skeptical as to offers of friendship and uncertain as to where the greater danger lies, prefer for the time being to seek safety in neutralism.

# THE JAPANESE GENERAL ELECTION OF 1952*

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Japan, on October 1, 1952, held the first general election for members of the House of Representatives since the end of the occupation. In that election, the conservative government party, the Jiyūtō (Liberal party), won a clear majority, the Communist party failed to elect a single candidate, and there was a marked advance by the two Socialist parties.[1]

An analysis of the election, however, does not fall into easy classifications. Although Japan's relations with the United States, China, and the Soviet Union, the question of rearmament and revision of Article IX of the constitution to provide the legal base for rearmament, the San Francisco treaties, and internal financial policies furnished controversial issues for party stands, the Japanese voter was confused by both the complexities of intraparty quarrels and the ambiguities of many of the candidates' campaigns. Japanese party politics since the inauguration of the Meiji constitution has been characterized by groupings around personalities rather than platforms. That characteristic appears to be a continuing political phenomenon under the new constitution.

Prime Minister Yoshida dissolved the lower house of the Diet in August, although his Liberal party had the support of 285 of the 466 members of the House of Representatives.[2] It was generally agreed that an election at this time would afford him the best opportunity to extend his premiership and his party's superiority in the Diet. Postponement of a general election would have allowed the articulate opposition to his government to crystallize. It was a political gamble, but Yoshida was playing gambler's odds.

Since the last general election of January 23, 1949, there had been much shifting of personnel within and among parties. In the Liberal party, a struggle had developed between Yoshida and the former party president, Hatoyama Ichiro. Hatoyama had been purged in 1946, the party presidency passing to Yoshida. In 1952 Hatoyama was depurged and began a campaign to recapture his lost influence and position. Thus the Liberal party entered the election campaign with an internal battle. While most of the Liberal candidates avoided taking sides publicly, the internal quarrel made the choice of the new Prime Minister dependent upon intra-Liberal party conferences and inter-party deals prior to the reopening of the Diet around November 1. The split between the two factions became acute on September 29th, when the Yoshida-controlled executive committee expelled the pro-Hatoyama ex-Finance Minister, Ishibashi Tanzan, and the former Secretary-General of the party, Kono Ichiro.[3]

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[1] Unfortunately, Japanese political party labels often do not describe the ideological nature of the party. Japanese political parties include: Jiyūtō—Liberal party; Kaishintō—Progressive party; Saha Shakaitō—Left-wing Socialist party; Uha Shakaitō—Right-wing Socialist party; Kyōsantō—Communist party; Kyōdōtō—Cooperative party; Rōnōtō—Labor-Farm party; Saiken Renmei—Reconstruction League.

[2] There was general grumbling in the newspapers at the time of the dissolution that it was an unconstitutional act because Yoshida's government had not received a vote of no-confidence, nor had it been censured. However, this did not develop into a major campaign issue.

Shigemitsu Mamoru, released last year from Sugamo prison after having served the sentence imposed upon him as a war criminal by the International Military Tribunal for the Far East, entered politics and became the president of the Progressive party.[4] The Progressive party has shown instability since its postwar inauguration. Drawing from prewar Minseitō personnel and policies, it first appeared as Shimpotō, then Minshutō, and, last year, it was again reorganized under Shigemitsu as Kaishintō. Its primary need has been a popular name to draw support, Ashida Hitoshi never having recovered from the bribery scandal which overthrew his premiership in 1948. With its reorganization, the Progessive party attracted some members from the Liberal party.

The Socialist party, too, has had difficulties since its postwar appearance. Disagreement over basic policies, as well as personal quarrels, finally led to a split into two parties: Right-wing Socialist and Left-wing Socialist.

The election campaign was vigorously but peacefully fought. On the related problems of rearmament and the maintenance of Japan's independence, the Liberal party, although implicitly in favor of eventual rearmament, advocated for the present a program of strengthening the national power, materially and spiritually, before rearming. It also advocated maintenance of internal order by a tough subversive activities prevention law and a strong National Police Reserve. It stood by its treaties and agreements with the Western bloc and its friendship with the United States. It also pressed for a strengthening of international collective security. On the issue of relations with China and Russia, the party platform said that such relations depended upon the sincerity of these two countries. Individual candidates, however, attacked both.[5] On domestic problems, the Liberals stood for a reduction of taxes, and were opposed to taxes which prevented the accumulation of capital. They were accused by their opponents of proposing the lowering of the taxes of the wealthy without a proportionate reduction in taxes affecting the working class. The party also stood for government control of prices, crop requisitioning, and planned food production. It also advocated industrial rationalization and increased bond issues, which the opposition said would lead to another spiral of inflation. Liberals were for legal restrictions against general strikes.

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[3] *Osaka Mainichi*, Sept. 30, 1952, p. 1.

[4] Shigemitsu had never taken an active part in politics before this time. Before and during the war, he was a career diplomat. Today, he has considerable popularity, symbolizing what many Japanese consider unjust aspects of the Tokyo trials.

[5] In a political rally held at the Uchisange Shōgakkō in Okayama City, the author heard Liberal candidates take the position that American troops in Korea were defending Japan and that Russia and China were aggressive states that must be suppressed eventually.

The Progressive party did not differ materially from the Liberal party on the major issues. The Progressives did advocate rearmament without the Liberal time restriction. In essence, they were for the Liberal program but said they could carry it out better. The Right-wing Socialists placed their faith in the United Nations to protect Japan and were against rearmament. They were not anti-American. With regard to China and Russia, the platform requested these two countries to renounce recourse to armed revolution and to cooperate with international efforts for peace. It recommended that attempts be made to reopen trade relations with both countries. In domestic policy, the party wanted reduced taxation of those in the lower income bracket, including complete exemption from taxation of all incomes below ¥20,000 per month.[6] It advocated government control and government planning but not government ownership of industry.

The real beginning of a division between left and right was marked by the Left-wing Socialist party. It opposed not only rearmament but also those parts of the Peace Treaty that provided for American garrisons in Japan. It opposed the Security Pact and the Administrative Agreement between the United States and Japan. Many of its candidates were openly hostile to the United States. On the other hand, the party advocated opening of trade relations with China and Russia and the negotiation of an overall peace treaty that would include these two countries. Domestically, while not going so far as to endorse all-out government ownership of property, Left-wing Socialists were in favor of a greater degree of government control of the nation's economy than were Right-wing Socialists.

The Labor-Farm party, in the anti-American camp, opposed the San Francisco agreements and rearmament. The Cooperative party placed its trust in maintaining Japan's independence in "new international socialism," but would rearm by autonomous defense units guarding against the resurgence of militarism. The Reconstruction League was openly chauvinistic.

The Communist party platform followed its usual line. The United States must be excluded from Japan, Japan's economy must be oriented toward China and Russia, the National Police Reserve, whose members were called mercenaries of the United States, must be liquidated and the defense of Japan entrusted to People's Armies. On the domestic side, the Communists advocated a program that would be a transitional stage from Japan's present position to socialism.

Despite predictions of possible disorder during the election—it was feared that the Communist party might adopt strong-arm tactics—the election was without major incident. There were more than 11,000 reported violations of Japan's rather stringent election laws which forbid, among other things, house-to-house solicitation of votes, general distribution of handbills or public posting of campaign signs, and unauthorized public rallies.[7] On election day the Communist party covered the cities with illegal handbills, but beyond that the anticipated trouble did not develop.

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[6] ¥20,000 a month is above the average working man's wage.

The Liberal party, with 240 candidates elected, captured a majority in the House of Representatives. However, this number was a reduction of 45 seats from the 285 held at the time of the dissolution of the Diet. The Progressive party captured 85 seats, a gain of 18, but far below its pre-election expectations. The Right-wing Socialist party gained 57 seats, an increase of 27; the Left-wing Socialist party won 54 seats, a gain of 38. The Communist party failed to seat a single candidate, although it had captured 35 seats in the 1949 election and held 22 at the time of the dissolution of the Diet. Its total vote of 894,823 comprised 2.6% of the ballots cast, compared with its 1949 total of 2,984,771, which was 9.8% of the votes cast. The Cooperative party with 2 seats compared with the 5 it held in August, and the Labor-Farm party with 4 seats, the same as in August, remained unimportant. The Reconstruction League, the new nationalist party, gained but a single seat. The various other small parties had 4 seats as against 6 in August. The unaffiliated successful candidates numbered 19 as against 2 in August.

TABLE I[8]

| Party | Seats after 1949 election | % of vote | Seats at time of dissolution | Seats after 1952 election | % of vote |
|---|---|---|---|---|---|
| Liberal | 264 | 43.8 | 285 | 240 | 47.8 |
| Progressive | 69 | 15.7 | 67 | 85 | 18.9 |
| Socialist | 48 | 13.5 | | | |
| Right-wing Socialist | | | 30 | 57 | 11.5 |
| Left-wing Socialist | | | 16 | 54 | 9.9 |
| Communist | 35 | 9.8 | 22 | 0 | 2.6 |
| Cooperative | 14 | 3.4 | 5 | 2 | 1.2 |
| Labor-Farm | 0 | 0 | 4 | 4 | 0.7 |
| Reconstruction League | 0 | 0 | 0 | 1 | 0.5 |
| Miscellaneous | 24 | 7.2 | 6 | 4 | 0.1 |
| Unaffiliated | 12 | 6.6 | 2 | 19 | 6.8 |
| Vacancies | 0 | 0 | 29 | 0 | |
| Total | 466 | 100.0 | 466 | 466 | 100.0 |

There were 1,243 registered candidates (2.67 times the number of seats). Of these, 317 were incumbents, 393 former representatives, and 533 new candidates. Among the candidates were 321 depurged persons. Twenty-six women ran for office.[9] Table II shows the distribution of the successful candidates in these groups by party.

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[7] *Nippon Times*, Oct. 3, 1952, p. 1.

[8] Table based on compilations of statistics from *Japan Statistical Yearbook, 1951*, Bureau of Statistics, Office of the Prime Minister (Tōkyō, 1952), pp. 360–62; *Mainichi Nenkan, Shōwa Nijūshichi*, Mainichi Shimbun Sha (Tōkyō, 1952), p. 132; *Ōsaka Mainichi* (Japanese edition), Oct. 3, 1952, p. 1; and *ibid.*, Oct. 5, 1952, p. 2.

TABLE II[10]

| Party | Former representatives | Incumbents | New representatives | Total | Depurged | Women |
|---|---|---|---|---|---|---|
| Liberal | 132 | 56 | 52 | 240 | 79 | 2 |
| Progressive | 37 | 38 | 10 | 85 | 32 | 1 |
| Right-wing Socialist | 26 | 25 | 6 | 57 | 13 | 4 |
| Left-wing Socialist | 16 | 13 | 25 | 54 | 3 | 1 |
| Communist | 0 | 0 | 0 | 0 | 0 | 0 |
| Cooperative | 1 | 1 | 0 | 2 | 1 | 1 |
| Labor-Farm | 3 | 1 | 0 | 4 | 0 | 0 |
| Reconstruction League | 0 | 1 | 0 | 1 | 1 | 0 |
| Miscellaneous | 1 | 1 | 2 | 4 | 0 | 0 |
| Unaffiliated | 1 | 4 | 14 | 19 | 11 | 0 |
| Total | 217 | 140 | 109 | 466 | 140 | 9 |

The election results, although establishing a majority party, did not give it any positive mandate regarding the major issues of the campaign. Any interpretation that the loss of seats by the Liberals and the sizeable gain by the two Socialist parties mean a partial repudiation of American policy in Japan and a stand against rearmament must be tempered by several other considerations. Dissatisfaction with a government faced with disagreeable problems that have no popular solution, the lack of a definite stand by many Liberal candidates on these issues, and voting for persons rather than for policies enter the political equation. The complete ousting of Communists from the House of Representatives was a major political change. It did not come about because of the Communist party's shifting its support to Socialist candidates. The Communist offer of a united front with the Socialists was rejected, and Communist attacks on both wings were as bitter as those made against the Yoshida government. The shift from the Communist to the Socialist parties can be better interpreted as a shift of non-Communist party member leftists from support of the Communist line to support of the Socialist program. Even though many Japanese dislike Yoshida's arrangements with the United States, they are not beguiled at this time by the Communist story of Russia's benign policy toward the Far East and Japan. Furthermore, the election stands as a repudiation of the Communist party's recent Bolshevik tactics. If this election indicates a trend toward the left, it is toward an indigenous left. The desire for real independence, it is suggested, transcends other political ideologies.

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[9] *Nippon Times*, Oct. 1, 1952 p. 1.,

[10] *Ōsaka Mainichi* (Japanese edition), Oct. 3, 1952, p. 1.

At the same time, evidence of resurgent nationalism is to be found in the election of 140 candidates who have been depurged. Yet it is doubtful that this means a rising Fascism, as some political observers fear. In general the depurged were distributed among all parties and were not ultra-nationalists as a group. While a few ultra-nationalists, such as Tsuji Masanobu, Kuhara Fusanosuke, and Kita Reikichi, were elected, the Reconstruction League succeeded in electing only one representative, and other ultra-nationalists such as Muto Santoku of Okayama-ken were defeated.

It would appear, then, that the Japanese voter has rejected both right and left extremism and has continued to support a conservative government. The loss of conservative support as compared with the 1949 election has been to the advantage of the more moderate and independent leftist politicians.

Japan's policies during the life of the new government are rather clearly defined by the results of the election. Japan has, for the moment, cast her lot with the West, particularly the United States. The San Francisco patterns, therefore, will be continued. The government will try to stabilize Japan's economy through positive cooperation with the United States, with defense industries as the heart of Japan's economy. Japan will assume the character of a subcontractor of the United States, particularly in American procurements for Korea and development projects in Southeast Asia. With regard to rearmament, the new government will have the strength to present, if it so decides, an amendment to Article IX of the constitution, looking forward to an ultimate conscription system. The opposition (Left-wing Socialist party and Labor-Farm party) does not have the parliamentary strength to stop this program. Thus, even though the conservative politicians have lost ground in the election, they maintain enough strength to continue their right-of-center program.

If the Liberal party cabinet fails to have a long life, its fall will be due more to a resumption of intra-party quarreling together with political opportunism by the Progressive party and the Right-wing Socialist party than to inherent opposition to the government's program.

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# BOOK REVIEWS

*Resources for Freedom, A Report to the President by the President's Materials Policy Commission, 1952: Vol. I, Foundations for Growth and Security; Vol. II, The Outlook for Key Commodities; Vol. III, The Outlook for Energy Sources; Vol. IV, The Promise of Technology; Vol. V, Selected Reports to the Commission.* (Washington, D. C.: U. S. Government Printing Office. 1952. Pp. vi, 184; 210; 43; x, 228; 154. $1.25; $1.50; $.50; $1.75; $1.25.)

The Paley Commission has injected a stream of fresh air into a public policy atmosphere that had become stuffy from the constant recycling of the ideas of the early New Deal and those usually associated with the names of Theodore Roosevelt, Gifford Pinchot, and Robert Malthus (the latter ideas known today as "Neo-Malthusian"). Its approach to the free world's resources problem emphasizes the requirements or end use side of resources: "The growth of demand is at the core of the materials problem we face." Very broadly, this approach, first, foresees for a considerable number of years the basic economic characteristics of the society with which it is concerned—by projection of such factors as population, working force, and gross national product. Second, it estimates the resources requirements of such a society. How much copper, for example, would be demanded in the year 1975, if the price of copper, relative to the general level of prices, were to remain constant? This estimate is derived, in turn, from estimates of the demand for those end products, such as telephones, which use copper. Third, this approach estimates the supplies of resources that are likely to be forthcoming at the assumed prices. These projections depend, among other factors, on careful estimates of reserves, in terms of their economic as well as physical availability. And finally, by indicating the probable extent of demand and supply at constant relative prices, this approach enables one to foresee potential price rises and to plan in advance to forestall them or adjust to them by measures designed to expand production, where this can be done without much increase in cost, or by measures designed to develop substitutes, reduce physical waste, and the like, where increased supply cannot be induced.

It will be objected by some that the Paley approach places too great emphasis on economics and especially on costs and prices. This need not and should not be the case. To the contrary, the Paley approach can be used to introduce a degree of flexibility into analyses of conservation which, too often in the past, have become stuck on inflexible concepts of physical stocks of resources. Thus, the use of projections and of price factors in these projections can provide a sensible framework for balanced judgment between policies for increasing domestic production of any resource (by pushing back the technological, physical, and economic boundaries that limit supply); policies for increasing procurement from foreign sources; and policies for reducing demand for the resource (by more efficient designs and processes and the use of substitute materials). No other approach to conservation and resources problems offers a framework of analysis so broad and yet so useful and meaningful.

By its very nature, the Paley approach requires the combined consideration of resources related in use. Thus, for example, it becomes well-nigh impossible to consider petroleum policy without giving full attention to competing sources of energy—coal, natural gas, and hydroelectric power. This has not been the case in the past where, under other frameworks of analysis, petroleum policy has been considered independently of policies for the other energy fuels.

It will be argued that the grouping of resources in terms of end uses, as required by the Paley approach, is deficient because it deflects emphasis from the overriding importance of the unity of resources in nature. Thus, relating hydroelectric power to coal and oil overlooks the relation of hydroelectric power to irrigation, navigation, and the general multiple purpose development of the river and its watershed—a concept which has at long last asserted itself with great insistency. Certainly the natural unity of resources cannot be disregarded, and the concept of multiple purpose river development must be applied. But this does not mean that the most fruitful framework for resources analysis is one which uses for major classifications water, land, and minerals. The need is rather for an analysis of hydroelectric power in relation to other energy sources, of irrigation in relation to other sources for increasing agricultural production, of navigation in relation to other means of transportation; and then for an adjustment and modification of the results obtained in the light of the optimum multiple purpose development of the river basin.

It is true, of course, that the Paley approach, like any other, can be applied too narrowly; and this must be guarded against if it is to serve as a framework for public policy. The approach might be applied so as to emphasize only national and overlook regional factors in resources development; and to a certain degree the Paley report does slight regional factors. On the other hand, the Paley approach will minimize the danger of equating resources development with regionalism, an error committed too often under other frameworks of analysis. Similarly, the Paley approach might be applied so as to emphasize economic policy issues and overlook those related to social objectives and organization. But the *Report* gives adequate attention to problems of organization and states explicitly certain social objectives, about which more will be said below.

In its 25-year projections of the basic economic characteristics of our society, the Commission has made two assumptions which are of considerable interest to the student of political economy. First is the emphasis on growth. Our gross national product, says the Commission, will be double in 1975 what it was in 1950—almost 550 as against 273 billion dollars. Why this belief in growth? At one point, the Commission says its belief is irrational: " . . . we share the belief of the American people in the principle of Growth. Granting that we cannot find any absolute reason for this belief we admit that to our Western minds it seems preferable to any opposite, which to us implies stagnation and decay." At another point the Commission presents a very definite rationale for the growth rate selected, and impliedly for the belief in growth itself, when it states that the rate of growth assumed is merely the past or historical rate of 3 per cent a year.

These statements taken together are a reflection, it is believed, of a somewhat awkward or self-conscious attitude of economists in adjusting to a new emphasis for public policy. Only since the postwar depression, for which they planned so carefully, failed to develop, have economists as a group turned their backs on depression psychology with its stress on fiscal policy, compensatory spending, and the like, and turned instead to an emphasis on steady and continuing growth and on projections of this growth. Yet, in doing this and in seeking the "scientific" data to support it, they find that, through it all, there has been a long range rate of growth of roughly 3 per cent a year, and it is only this rate which they now predict for the future.

In a real sense it is this emphasis on growth which distinguishes the Paley approach to resources development and conservation from that of the early New Deal. Then, conservation was associated with depression public works (PWA) and the social need to get unemployed boys out of the sweaty city and into the open (CCC). Roosevelt himself, and men like Harold Ickes, had a more genuine belief in sustained resources development for use. They had the faith and vision to realize that works such as Bonneville and Grand Coulee would be vitally needed in the future and would help to build an industrial empire in the Pacific Northwest. But many opposed these dams; they called them "white elephants." And a good number of those who supported them did so primarily because they were employment-creating, economy-stimulating public works.

A second basic assumption of the Paley Commission which deserves discussion is that the combined materials requirements and supplies of the entire "free non-Communist world" should be considered at the same time. Thus, projections are made of gross national product and of material requirements for Free Europe, the United Kingdom, Canada, Australia and New Zealand, and Japan; and of material requirements alone for the rest of the free world—the less developed, raw material producing areas, for which gross national product would have no special significance. There is a chapter in Volume I entitled "Promoting Free World Expansion"; and the commissioners "believe that the destinies of the United States and the rest of the free non-Communist world are inextricably bound together. This belief we hope will color everything we have to say about the Materials Problem." These projections and statements might lead one, especially a fellow free world citizen, to expect that the resources demands of West Germany, Italy, Japan, and Indonesia, will be given equal consideration in the *Report* with those of the United States. But they are not. The major emphasis throughout is on the needs of the United States and on public policies to meet them—so much so, in fact, that the Commission has been charged by some with bowing towards the free world and speaking a prologue in its behalf, and then proceeding to act out a highly nationalistic drama.

I do not concur in this charge, though I recognize that the *Report* is somewhat schizophrenic in this regard. This can be attributed to a number of factors: First, considerably less information is available on the requirements and resources of the free world than on those of the United States alone; second, the

Commission feared, no doubt, that it would be charged with meddling in the affairs of other nations if it ventured beyond the foreign resources functions and responsibilities of the United States Government, United States investors, and possibly international agencies of which the United States is a member; finally, with respect to the underdeveloped areas, to which the *Report* devotes considerable attention, the Commission has proceeded on an assumption which it does not, and in the light of available data probably cannot, prove. Thus, the Commission *assumes* that the development of mineral resources in an underdeveloped country, both for export and for domestic use, will lay the basis for a general and diversified economic development in that country, thereby improving its living standards. On the basis of this assumption the Commission proposes increased foreign investment in the mineral industries of the underdeveloped countries, estimating the costs of the desired development in the terms of the mining engineer, with some allowances for port and other direct development costs.

Critics of the *Report* look at these cost estimates, complain that they do not include the *total* costs of minerals and concomitant general economic development, and conclude that the Commission has viewed the problems of the underdeveloped area from inside the United States rather than from inside the underdeveloped country itself. The critics are wrong if the Commission's assumed relationship between minerals and general economic development is right. But who knows? The few considerations which the Commission presents to support its view are not conclusive.

The Commission's policy proposals, designed to enable society to forestall or adjust to potential price rises indicated by the projections, are too numerous to mention, let alone evaluate, in a review. The philosophy underlying these proposals, however, can be discussed with profit. This philosophy is that unfettered private enterprise, free from government controls and regulated to the greatest extent by "the spur of the profit motive," "the competitive market structure," and "the price system," will bring about the desired adjustments. "We believe in a minimum of interference with these patterns of private enterprise."

"But," the Commissioners go on to assert, "to believe in a minimum of interference is not to believe that this minimum must be set at zero. Private enterprise has itself from time to time asked for helps, or restraints, or counterpoises from Government . . . for this reason, among others, we have experienced for a long time a mixture of private and public influences on the functioning of our economy." In reviewing the proposals for "public influences" on "the competitive structures" of the mineral resource industries, one might conclude that it is the "helps"—in the form of free government services and subsidies, largely as tax relief—with which the Commissioners are most concerned. Their proposal that the present liberal provisions for expensing of exploration costs for oil and gas be retained and, *at the same time*, that the rates of percentage depletion for these fuels be kept at their present high levels—27½ per cent per annum—provides a dramatic illustration.

The strong bias for unfettered, but aided, private enterprise in its proposals for the mineral industries stands in sharp contrast, however, to the Commission's proposals for the renewable resources. For forestry, the Commission supports the ultimate in control—compulsory regulation of cutting on private forest lands. States are to be encouraged to enact such legislation, but "if after five years there still remain important gaps in the State system of compulsory regulation, Federal legislation should be enacted authorizing the Federal Government to establish minimum cutting practice regulations." For industrial water supplies, the Commission suggests the possibility of a federal punitive tax against industrial polluters. The application of such a tax would have effects similar to that of close federal regulation. And for agriculture, the Commission accepts pretty much the present system of supports and controls, though it hopes that a greater emphasis on farm management planning will reduce the necessity for relying on them.

How, then, can these proposals for vastly increased regulation for forestry and for consideration of further federal controls over industrial water users be explained? One can always say that the problems are vastly different from those in the mineral industries. And this is right; but so are the problems in the oil industry quite different from those of copper. Furthermore, the whole flavor of the chapters and monographs on the renewable resources can be distinguished from that of the chapters on the mineral resources; they are not nearly so aggressively free-market oriented. Again, why? I do not know; but I should like to suggest two possible reasons: First, most of the mineral resources (except, to a limited extent, the energy fuels and those minerals located on the public domain) have not been the object of broad and comprehensive public policy treatment in the last thirty years as have forestry, water, and agricultural resources; and the leaders of the mineral industries, as well as the government's mineral experts in the Geological Survey and the Bureau of Mines, continue to resist such treament. Second, and not unrelated, the Paley Commission included more mineral industry executives than any other group. George R. Brown is a big Texas oil man, and Arthur Bunker is president of Climax Molybdenum Company; and their points of view in many of the Commission's deliberations were, as should be expected, those of the mineral industries. The other Commissioners were William Paley, Chairman of the Board of Columbia Broadcasting Company; Eric Hodgins, a senior editor of *Fortune;* and Edward Mason, Dean of the Graduate School of Public Administration, Harvard.

Though there may be many valid criticisms of the Commission's proposals and even of the insistency and consistency with which the Commission has pursued its basic philosophy in regard to the non-renewable resources, the Paley report is the most original and significant contribution to the study of resources and public policy since the 1933 report of the Mississippi Valley Committee and the early reports of the National Resources Committee. Already, most government agencies are reexamining and reevaluating their resources programs in the new light of the "Paley approach."

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*The Tenney Committee; Legislative Investigation of Subversive Activities in California.* BY EDWARD L. BARRETT, JR. (Ithaca: Cornell University Press. 1951. Pp. xi, 400. $5.00.)

*Un-American Activities in the State of Washington; The Work of the Canwell Committee.* BY VERN COUNTRYMAN. (Ithaca: Cornell University Press. 1951. Pp. ix, 405. $5.00.)

*Loyalty and Legislative Action; A Survey of Activity by the New York State Legislature, 1919–1949.* BY LAWRENCE H. CHAMBERLAIN. (Ithaca: Cornell University Press. 1951. Pp. vii, 254. $4.00.)

*The States and Subversion.* EDITED BY WALTER GELLHORN. (Ithaca: Cornell University Press. 1952. Pp. vii, 454. $5.00.)

These are four volumes in the series of Cornell Studies in Civil Liberties sponsored by the Rockefeller Foundation and conducted under the direction of Professor Robert E. Cushman. It is a distinguished series, dealing with one of the most perplexing problems of our times and written by exceptionally qualified, temperate, and responsible scholars. It consitutes the most meticulous description and penetrating analysis ever undertaken of the many-faceted governmental programs purporting to promote internal security through exposing and controlling disloyalty and subversion. Thoughtful citizens, whether professional scholars or not, should be beholden to the Rockefeller Foundation for making these studies possible and to Professor Cushman for his initiative in this notable enterprise.

*The Tenney Committee* is a tight, carefully documented account of the major activities of California's Fact-Finding Committee on Un-American Activities. Authorized to investigate "subversive" activities generally, the committee interpreted its mandate broadly, exercising unfettered discretion substantively and procedurally. Operating mainly through the technique of generously publicized public hearings, the committee spent $146,000, produced over fifty volumes of typewritten transcripts of hearings and five formal reports totaling 2,241 pages, and recommended a legislative program of more than twenty bills, of which five were ultimately enacted. One was subsequently declared unconsitutional by the California Supreme Court. The flavor of these bills is suggested by one providing that courses in the Constitution of the United States and American History should not be combined with social science or social studies, and by another forbidding the teaching of politically controversial subjects in the elementary grades. Neither was enacted. The redoubtable Tenney emerges as a legislative St. George dedicated to destroying dragons of ideological impurity in California.

The author attributes the public opposition which the committee ultimately engendered to its dogmatic assumptions concerning the nature and extent of the communist movement, which led it to identify opposition to its methods with sympathy with communism. As the *San Francisco Chronicle* quipped:

> A Communist is any
> Who disagrees with Tenney.

Tenney's withdrawal from the committee in 1949 probably ranks among the more fortuitous events in California since the gold rush. Vigorous critics of the committee have asserted that it was an instrumentality of reactionary business interests to break crusading labor unions and discredit liberal movements. The author states that he saw no evidence to support the charge of such a deliberate conspiracy. On the contrary he is convinced that Tenney and other members of the committee were honestly convinced of the justice and necessity of their endeavor.

The author includes generous quotations from the transcripts of committee hearings and reports, and from press accounts of its activity. He writes with a disciplined objectivity which one might argue is too detached in the light of the record he presents. His technique, however, is to project the documentary evidence, which speaks for itself. This is vivid and effective. "There are no scales," he writes, "that can tell us accurately whether in the balance the activities of the Tenney Committee were of service or disservice to the state." Barrett's sharpest criticism is directed toward the conduct of the hearings. The evidence convinces him that they "were not conducted in a manner calculated to permit rational finding of fact. A general view suggests that prosecution rather than investigation was the theme." Senator Tenney's personality, he says, "added much that was irrational to the hearings"; the obvious purpose of the hearings was to publicize conclusions rather than find facts; and much of the testimony presented was not tested for reliability. The pattern has become a familiar one, but nowhere does it emerge more bluntly than in this most melodramatic of all un-American activities committees.

*Un-American Activities in the State of Washington* is a report of the brief, episodic life of the Canwell Committee (Joint Legislative Committee on Un-American Activities) and the investigation conducted by the University of Washington. Compared to the Tenney Committee the Canwell Committee was a model of restraint. It held two extensive hearings, the second of which resulted in a successful contempt action against five witnesses for refusing to answer questions concerning their political affiliation. Two volumes of testimony were published, naming a vast number of people afflicted with a vague species of ideological sin. Unlike some of its counterparts in other states, membership in the Canwell Committee produced no great political pay-off. Of four members of the committee whose legislative terms expired in 1948, only one was re-elected. Canwell himself was defeated after campaigning on his committee record, declaring that "those who attack the committee are either ignorant or subversive." The lone successful candidate made no issue of his work on the committee.

The author presents a meticulous job of factual reporting, eschewing all value judgments until his final chapter of general appraisal. This reviewer had the feeling that, given the mass of detailed material presented, some advantage would have accrued from drawing conclusions and presenting short summaries at the end of several of the chapters. In his appraisal the author seriously questions the legitimacy of the committee's work, which focused almost exclusively on the political beliefs and associations of the people it investigated. He is convinced that much of the vast bulk of evidence published by the committee is questionable on its face. Much is hearsay, personal opinion, impossible to evaluate. Some is patently capricious, as when one J. B. Matthews, a professional "friendly" witness among committees of this sort, devised a formula for identifying "fellow travelers" which scooped in the names of Albert Einstein and Senator Charles Tobey. Countryman concludes that the general flavor of the interrogation at committee hearings was "well designed to produce a collection of rumors, opinions, suspicions, and perhaps hallucinations which will furnish content for newspaper headlines, but is not likely to get information of much reliability. . . ." Hence the "committee was not after facts . . . it was after charges." A careful analysis of the tenure proceedings of the University of Washington convinces the author that ". . . it is impossible to conclude the University of Washington is better equipped today for its 'quest for truth' than it was before the Canwell committee began its investigation."

*Loyalty and Legislative Action* surveys New York's activity from 1919 to 1949: the Lusk Committee investigations of 1919–20; the Ives Loyalty Oath Law; the McNaboe investigations; the Devany Law; the Rapp-Coudert Committee investigations of the New York City schools; investigations of the Board of Higher Education; and the Feinberg Law. The author handles his subject on a high level of reporting and critical evaluation throughout. His judgments are discriminating and precise. While deploring the substance of the Devany Law, he emphasizes its detailed procedural safeguards. Criticizing the procedural defects of the Coudert Committee, he emphasizes its honest desire to protect the innocent and avoid sensational publicity. His conclusions are comprehensive and direct. The Lusk Committee and the McNaboe Committee engaged in "egregious nonsense." The Lusk Committee, in particular, "violated almost every canon of responsible conduct," employed "the tactics of the side show barker and the old-time patent medicine hawker," and "ranged recklessly over the entire area of individual rights with wanton disregard for such fundamentals as separation of powers or due process of law." The New York experience convinces the author that politically constituted committees are inherently incapable of dealing satisfactorily with subversive activity. He warns of the semantic fog which blankets the word "subversive," of the problems of identifying communists, that the price of communist purges is a closed society, that loyalty probes focus on the transgressor rather than on the conditions which have produced unrest, and that judgment in these matters is guided by formula rather than evidence. He recommends certain procedural reforms in the conduct of investigations, and finally expresses more concern over the possibility of intellectual conformity in schools than over the possibility of a few instances of taint.

*The States and Subversion* is a symposium dealing with California, Illinois, Maryland, Michigan, New York, and Washington. Chapters on California, New York, and Washington are capsule presentations of the foregoing books by their respective authors. E. Houston Harsha writes on the Broyles Commission of Illinois which, on the record he presents, accomplished little other than the stimulation of the adrenal glands of its own members. Possibly the most fruitful result of the hearings, which focused largely on alleged subversion in education, was Robert Hutchins' statement that "The question is not what our professors belong to but what they are doing." William B. Prendergast analyzes Maryland's anti-communist Ober Law. His estimate is judicious. Believing that the need for the law was never satisfactorily demonstrated, he nevertheless concludes that it avoids many defects which frequently debase this kind of statute. Robert J. Mowitz examines Michigan's bout with subversion. Michigan has augmented the usual safeguards against subversion by forbidding the display of Red flags and establishing a special Subversive Activities Division in the state police department. Detroit initiated the first full-scale municipal loyalty program, and to this the author devotes considerable attention.

The concluding chapter, written by Gellhorn, is pithy and forthright. He believes the record shows that freedom has sometimes been threatened and impaired by the attempts to preserve it. "Prudence can be overborne by hate and fear as well as by carelessness." He is worried about the enlarged concern over groups as distinct from individuals; he wonders whether "anticipatory criminality" ought to gain recognition in American law; he thinks legislation is an inappropriate medium for expressing loathing; and that democracy is not likely to be preserved by closing the ballot box to those who may not cherish democracy, or by eliciting orthodoxy from teachers by stratagems of creeping pressures. He warns that American principles of fairness, wisdom, and freedom were not wrought for periods of calm and comfort.

In all of the books except *Un-American Activities in the State of Washington* the authors include selected documentary materials in appendices.

Few communists have been caught by the vast apparatus of investigation and legislation ostensibly devised to entrap them. By 1950 over 300 state statutes were directed at subversion. This is defense in depth with a vengeance. One may well think of this what Holmes thought of three generations of imbeciles: it's enough.

The wages of orthodoxy are stagnation and death for the democratic community. These volumes offer variations on the same theme: professional patriots engaged in competitive orthodoxy. On the evidence presented, moderation and a rational relation of means to ends are the exception in the search for subversion. Sincerity may motivate the search, but sincerity without temperance imperils. Inquisition is usually clothed with sincerity. What emerges from these studies is the fact that America is ideologically unprepared for the exigencies of cold war. Why? Part of the answer lies in the nature of American cul ture and the psychological responses of Americans to their present travail. We are a people of action, unusually ethnocentric, accustomed to achieving results on a grand scale. Confronted with an invidious and protean form of imperialism, we are frustrated. Unable to cope effectively with the source of the danger in Moscow, we have become victims of a pervasive anxiety neurosis. Fearing that which we cannot reach, we transfer our hostility to that which we can reach.

We are burdened with the irrationality of fear. The legislative activity related in these studies reflects attempts to assuage varieties of conscious and subconscious anxiety. Unmistakable overtones of sadism are revealed by the record. Psychologists inform us that sadistic strivings help the individual to escape his unbearable feelings of powerlessness. Research in the authoritarian personality or the ethnocentric personality reveals tendencies of stereotypy, intolerance, self-glorification, lack of individuality, condemnation of complex political behavior. Contributions of analysts such as Fromm, Frenkel-Brunswick, and Adorno offer much to clarify understanding of the psychological and sociopolitical facets of the phenomena with which these volumes deal. Research in political behavior can further enlighten understanding in these matters. Perhaps causes of this particular trauma in the body politic are also to be found in structural aspects of American society, as C. Wright Mills and Sebastian de Grazia have suggested in their respective analyses of social morality and the disintegration of belief systems in the political community.

These studies in the Cornell series admirably fulfill the purpose for which they were written: to describe and analyze their subject largely within a legal frame of reference. Beyond this frame of reference, however, lie broad and significant factors suggested above. Further exploration along these paths would provide a valuable supplement to the excellent work already accomplished by the authors of these books.

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*Marsilius of Padua, the Defender of Peace: Volume I, Marsilius of Padua and Medieval Political Philosophy.* BY ALAN GEWIRTH. (New York: Columbia University Press. 1951. Pp. 342. $4.75)

Perhaps the most difficult task confronting the historian of political thought is to steer a clear course between that historicism which reads the past as though it were concerned with contemporary issues and that historical relativism which renders that past an absolute elsewhere, relevant to itself alone. Positively, it is his job to understand past thinkers and movements by a clear grasp of their problems, their frame of reference, and their intellectual and cultural heritage in such a way as to discover their genuinely relevant insights and the proper applicability and limitations of their fundamental viewpoint, and to avoid their facile use as supports or as whipping-boys in current controversies, in an age which professes reliance on scientific reason but too often searches for the support of authorities who lend, or can be made to lend, prestige to positions presently taken.

Marsilius of Padua's *Defensor Pacis* (1324) has in recent times been construed as an anticipation of most subsequent political thinkers and doctrines, and has been read successively in our own day as an ardent defense of democracy and as a support of totalitarianism. Patient and careful examination by a thorough scholar possessed at once of the submissive humility to give his author careful and respectful attention, of that degree of equality basic to effective appreciation and critical judgment, of that range of knowledge both of previous and of later thought necessary to sound construction and correct inference, and of that disinterested concern for truth which eschews superficial similarities and ready lessons, has for some time been wanting and wanted, especially for the service of the non-specialist confused by claims and counter-claims, and lacking in the expertise required for their judicious assessment.

Professor Alan Gewirth meets the criteria, and discharges the obligation in the volume here reviewed; and one may anticipate with reasonable confidence that the second volume, a critical edition and translation, will effectively complete the task of providing a definitive treatment for our time of a thinker who by sustained and consistent system radically challenged and changed for his time and place the terms and presuppositions of discourse concerning man and God, church and state, the individual and the social order. It is Professor Gewirth's great accomplishment to clarify the key concepts which are at the root of that change, to show its true nature, to make clear its ideological provenance and its institutional matrix, and so to reveal its fundamental force, which is something more and other than a plea for different governors and government: it is an insistence on different criteria of good, and on different measures and methods of analysis and assessment, for the political-social order and for the realm of religion, than those prevalent in the dominant thought of the Middle Ages, which, whatever the attitudes to papal claims, generally accepted the doctrines of the Two Powers and an absolutistic and transcendent ethic as criterion by which to measure and judge all earthly performance.

At the root of Marsilius' teaching, Professor Gewirth shows, is biological nature, human will, a search for earthly satisfactions, and consequent conflicts to be resolved. The political order is necessary to such resolution, and to the provision of satisfactions: the criterion of its success and adequacy is earthly peace, and the value of any regime depends on the relation of its ends, as effective purposes, to the attainment of common weal, the effective welfare of its people. Marsilius' viewpoint is, then, secular and naturalistic; and he reconstrues authorities and reshapes traditional issues in that light. In particular, he relies on Aristotle, but follows Averroes, not Aquinas, in discovering his meaning and significance; as he uses the realistic and positivistic insights of St. Augustine's analysis of the city of earth, while abandoning his concern with the ultimate City of God.

From these general attitudes, Professor Gewirth brilliantly demonstrates, follow all of Marsilius' specific political teachings, including the very real difficulties he confronts and the imperfect reconciliations he achieves where the logic of his assumptions makes for imperfect consistency. Moreover, once granted the assumptions, the Discourses into which *The Defender of the Peace* is divided become coherent units in one whole, though the first, being a positive construction of his viewpoint rather than pure polemics in others' terms, remains the vital core of the treatise.

Professor Gewirth proceeds to show that Marsilius' state is begotten of men's material needs; that it is concerned with their overt behavior, not their inner grace; that it aims at stability, at order, at civil peace; and that the functions appropriate to government at any time depend on what is requisite to that end. What *is* vital is unity, in government and in law: the state, begotten of men's individual needs, becomes overriding authority over them as a very condition of peace. Yet, in the context of the time, such a doctrine was liberating: men were delivered from many jurisdictions, while the state itself was not concerned to make them good by law, but only to render them civil. Moreover, in the last analysis the will of the people, in whose interest the state exists, is supreme, and itself defines the conditions of public safety to which the preservation of the state itself is basic.

The succeeding chapters examine in detail Marsilius' consequent arguments as to the nature and function of law; the meaning of his doctrine that the people is the legislator, and the issue as to whether his concept of the "valentior pars" refers to quantity or quality, to majority rule or to elite; the issue of the relation of government as effectuation of law's commands and the source and authority of the law itself; and the implications for the church and church organization of a secular view of the overriding and final character of the people's authority. The work then ends with a brief but forceful chapter on "The Significance of Marsilius," historical and theoretical.

The whole work is marked by carefully intricate, yet clear, analysis. It is fair to its subject, yet critical. Its great learning is consistently used to prevent false inferences from Marsilius' arguments based on current frames of thought, and to emphasize warranted ones. While Professor Gewirth's structure is of course peculiar to his subject, the principles underlying his analysis and his effective following of them make this work a model of its kind, worthy of a place among the great analyses of individual political thinkers. For by careful steering through a mass of argument where erroneous inference is a constant temptation, Professor Gewirth achieves a clear and forceful interpretation which produces an irresistible conviction of correctness, and shows unanswerably the errors in previous, and conflicting, interpretations. Above all (though Professor Gewirth makes no such claim, save by implication) it becomes clear that, for all his immersion in his own time, place, and issues, Marsilius is worthy of a place among the fundamentally great political philosophers, as he is the basic fount and founder of the modern secular, pragmatically oriented, and democratically directed, approach to politics, and to life in society as a search for the earthly welfare of persons, as they seek and sense it.

THOMAS I. COOK.

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*New Fabian Essays.* EDITED BY R. H. S. CROSSMAN. (New York: Frederick A. Praeger, Inc. 1952. Pp. xv, 215. $4.00.)

This volume comprises eight essays, in six cases written by members of the executive committee of the Fabian Society. As Mr. Attlee points out in his introduction, only one, John Strachey, has had ministerial experience. Such names as Gaitskill and Jay are absent. The book is a conscious attempt to restate at the present time the position of the Fabian Society indicated in 1889 in the original Fabian Essays. The editor states his position to be, not that of "labourism," but of socialism, defined in terms of human equality and of respect for individual personality. This is sharply distinguished from the practice of the Soviet State which, Mr. Crossman urges, is government by an elite, wrongly believed to be that of "a workers' state." Whether, indeed, Marxists will be prepared to agree that this socialist respect for individual personality is incompatible with economic determinism and that, if so, Marxists are not true socialists is an interesting matter for speculation, in which my sympathies are with Mr. Crossman. With his analysis of Asian communism, as in leadership a movement of the intelligentsia, I cannot agree too heartily.

That Mr. Crossman's socialism, unlike Mr. Jenkins', is colored by a romantic secularism of the Bertrand Russell variety, is probably merely due to an error of semantics, due to confusion of religion with the mores of brewers and stockbrokers—or else with the escapism of occupants of ivory towers. The sooner British Socialism gets out and keeps out of this Bradlaughian error, which presents socialism as not only the practical fruit of religion in social equity and safeguard for the individual worker's liberty, but as the *whole* of true religion and undefiled, the better for its stamina and vitality. The alternative, if the lesson is not learned, will be the development of a Christian Social party as inevitably in Britain as in every other country of Western Europe, since a stable majority workers' vote for Toryism is highly improbable. The distributivist tendencies of Mr. Crossman, against bureaucratic and managerial monopoly, are novel, noteworthy and welcome.

Mr. Crossman is not alone in the peculiar kind of chauvinistic piety which holds that Britain is especially elected by destiny, as a non-imperialist country, to hold up the lamp of reason amid the brute contests of battling ideologies. He rightly points out that communism is often regarded by colonial peoples as emancipating and damns Britain's deplorable Iranian policy, not (alas!) unsupported by British Labour. He somersaults to the conclusion that Kremlinism in Asia often is emancipating. Let him tell this to Mr. Nehru. Sometimes Mr. Crossman and Mr. Bevan come near to a preposterous and almost Mosleyan attitude of "minding Britain's business" and endeavor to hoist up again the happily upset balance of power, with Britain astride the barrel. On the contrary what is needed is not ideological "detachment" but, as even Mr. E. H. Carr indicates ("Propaganda and Power," *Yale Review*, Vol. 42, pp. 1–9 [September, 1952]), ideological re-education. Whereas Mr. Crossman endeavors to square his conscience with the deliberately contrived destruction, inside the Iron Curtain, of millions of human beings in order to achieve the best of possible worlds, seeking (as was said of the Swiss in the 40's) to be "neutral between good and evil," Mr. Denys Healey, in his excellent and mature essay on foreign affairs, has no illusions that the Soviet Union will not be guilty of barbarity and aggression just because it has "a socialist economy." Mr. Healey is not, however, guiltless of the oddly parochial illusion that "Britain is now the one white country with genuine friends in Asia" (Iran?). Perhaps he underestimates the fight still to be waged against imperialist exploitation, for example by rubber lobbyists, or even by the metropolitan workers' own demands on colonial Africa, and shares with Mr. Crossman an uncritical belief in the virtues of General Mao's bloody revolution which, achieving power by promising peace to distressed China, gave war. What Mr. Healey does do is to provide a proper appraisal of the immense importance internationally of Ernest Bevan, while rightly warning against the right-wing materialism which thinks that all will be happy if enough money, unbacked by ideas, is put into buying friendship abroad.

Mr. John Strachey, convert from Mosleyism and convert from communism, in his essay confesses that, in his latest incarnation, he has been brought to accept that piecemeal economic hypothesis which is equally anathema to both systems. From this vantage he informs us that the experience of the Labour government of 1945–50 shows capitalism to be more malleable than the ideologists, doctrinaires and orthodox conventicle-ists had supposed. The peculiar curse of the "intellectuals" of the Labour party, as distinct from the Trade Union Movement, has been their lack of articulate alternatives to this jealous conventicle spirit of "the bitter men," who suffer from dyspepsia and Bloomsbury, of which the *New Statesmen* has often been the especial exponent. Except maybe for Mr. Crossman himself, there are no adequate successors, as social theorists, to Tawney, the younger Laski and perhaps Evan Durbin. It is fascinating for anyone with a long memory to discover Mr. Strachey finding in America an outstanding instance of the shift of social power. He still has indeed doubts, but exhorts "the social and political heart of the West" to be proved "sound and viable" (*sic*). Mr. Crossman, in his article, interestingly comments that much of the trouble in Britain is traditional and psychological, and that America and Sweden both offer the worker still a more "equal chance."

Others of the essays are of a more limited character. Bevanite Mr. Mikardo recommends that the Trade Unions employ more highly paid industrial consultants, a matter on which Mr. Mikardo can speak with authority. Mrs. Cole opines that enough concessions in education have been made to religious minorities, although of course they have some rights; but omits to discuss a major source of British national weakness, the jealous distrust between the leaders of Britain's economy and the still ivory-sheltered leaders of the academic world. Although the book centers on the thesis that equality, and not just "equality of opportunity," is the goal, there is no satisfactory investigation of what is meant by equality, elsewhere discussed by Tawney; or whether men reach worthwhile personality by struggle, as an achievement, or are just born with two legs and equal. The valuable but incomplete phrase as indicating what is "viable," "equality of respect," is not developed to indicate what values are to be respected; and until this is done there remains slackness of thinking. Equality of opportunity, not least for colored folk, has still much good to confer on the world in creating what seems to me to matter more—fraternity. As a beacon of faith amid the darkness of Britain's fate, whether as Great Power or as verging on a Swedish future, this book offers no great light. As a set of useful traffic lights in the fog, it will be useful to every student. But the search for the compelling social faith, equal to the challenge of the times, it is to be hoped will not be discontinued by traffic regulations.

GEORGE CATLIN.

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*Law; The Science of Inefficiency.* BY WILLIAM SEAGLE. (New York: Macmillan Company. 1952. Pp. vii, 177. $3.50.)

This is a short, staccato recital of failures of the law to achieve some of its declared ends. Criminals escape punishment. Men whose carelessness has damaged others escape civil liability. Both public and individual litigants suffer the law's delays and cost. The charges mount up with satiric intensity; the net effect is to concede little real gain to society from the operation of its legal institutions.

The law man will find little new in the bills of particulars here filed against the courts, the bar, and the litigious process in general (Chs. II–V, VII), codification and "reform" through legislation (Chs. VI, VIII), and the administrative process (Ch. IX). He will not quarrel with most of the items of indictment, taken singly. But he need not be an unbending upholder of things as they are to feel that the book loses force in its many sweeping and dogmatic but debatable assertions of fact as to how the law works. Basically, the book carries less impact than it might because it includes no adequate analysis of the values in the light of which the "inefficiency" of the law is to be judged; instead these are left largely implicit in a way which too often seems to beg the issue. If the sole object of criminal law is to put men behind bars or under treatment, the criterion of efficiency of performance is of course clearcut enough. But if there is a social value in protecting individual freedom against official error, negligence, or malice, the criteria of efficient operation cannot be put so simply. It does not advance analysis to tag observance of the latter values as "inefficiency," condoned for purposes outside the legal order. The author has penetrating things to say about the extent to which the law is "inefficient" because men try to incorporate conflicting values in it. But this is the place at which to begin, rather than to end, discussion.

The book will serve the non-lawyer as a tightpacked, often pungent and witty summary of the leading insights of the literature of jurisprudence in this country of the last generation. Likewise, it reflects the dominantly negative character of that jurisprudence. Wise and learned in legal history, the author cautions and qualifies at various points of his indictment, but the qualifications are apt to be lost to any but the most informed reader, in the general tone of the book. Apart from the felt absence of a general definition of the criteria by which the law's efficiency is to be judged, the analysis suffers from not making explicit the author's theory of what makes society move. Especially it is not clear what is the book's theory of the comparative roles of man's contriving as against institutional inertia, in producing the "inefficiencies" described; the satiric bent of the style tends, more than the author probably intends, toward an innuendo that what happens, happens because of plots, plotters, or backstage maneuvers. This may be due partly to the fact that the weight of the indictment falls on the drama of lawsuits; treatment of legislation and the administrative process is relatively less detailed and is devoted in considerable part to features most analogous to litigation.

The author expresses wise cautions against exaggerating the creative role of law compared with other social institutions. Granting this, one need not believe that law is without major importance in helping set the framework within which social life goes on and the diverse energies of men find opportunity for release. "The law deals with the sickness of society," true (p. 164), but it deals also with the health of society, as it provides working procedures and instruments (e.g., the corporation), and defines the terms on which development may proceed (TVA, credit facilities, health regulation, for example). The author is entitled to choose a catalog of inefficiencies as his subject. But the breadth and detail of his catalog carries something more: an overall judgment against the net worth of the legal system. Taken within its own definition of its task, the book would carry more conviction if it were set in a more adequately stated perspective of the positive role of law in society.

WILLARD HURST.

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*The Politics of Agriculture; Soil Conservation and the Struggle for Power in Rural America.* BY CHARLES M. HARDIN. (Glencoe, Illinois: The Free Press. 1952. Pp. 282. $4.00.)

Scholars who pass this book by as simply a case analysis of an agricultural program will be making a great mistake. For Hardin's volume is a rich study in public policy with implications for political understanding and methodology that far transcend the field of agriculture. Unlike much writing by political scientists which deals with the political or administrative process apart from substantive problems, this book focuses upon the values and interplay of relationships of interest groups and agencies that take place in moulding a politically volatile program. Moreover, it is written by a scholar whose analysis is not circumscribed by conventional disciplinary boundaries.

To effectually penetrate the maze of relationships and forces that permeate agricultural programs, Hardin limited his study to what might be regarded as a relatively non-controversial area, the field of soil conservation. But from the first chapter onward, it is apparent that the physical and engineering aspects of erosion control alone involve political issues of great magnitude. The first part of the book is an examination of the interest groups and agencies that are most directly concerned with the national soil conservation program, the colleges of agriculture, the Extension Service, the Farm Bureau, the Soil Conservation Service, the Agricultural Adjustment Administration, and its successor, the Production Marketing Administration. Here Hardin lays bare the power structure of these organizations—the ideology and representativeness of their membership, the quality of their leadership, their conflicts, alliances, and strategies for the purpose of controlling the farmers' use of the land and thereby the foundations of rural life. The second part of the book is devoted to an analysis of the policy-making process and the adequacy of conservation policies that emerge from a political environment dominated by vested interest groups. The difficulties that beset both Congress and the Department of Agriculture in ascertaining and formulating desirable policies for soil conservation amidst the ties and cleavages of congressional committees, agricultural agencies, and farm organizations are examined. Particular attention is paid to the appropriations procedure, the congressional hearing, and administrative reorganizations as instruments for achieving well-balanced policies. The final section of the book, entitled "Recommendations and General Interpretation," consists of two chapters, the first dealing with the need for reorientating soil conservation policies to the overall goals of farm family living, the second with the implications of the political-administrative pattern relating to agriculture for democratic government.

Individuals who are particularly interested in agriculture will wish to review in detail Hardin's far-reaching recommendations for changes in agricultural policy and administration. Suffice it to say that he finds the "configuration of political power and influence" which dominates agriculture unhealthy from the standpoint of wise public policy and the democratic process. Though he is properly appreciative of the wholesome relationships that have been built up over the years between the U. S. agricultural agencies and rural people, he argues that where these ties are maintained for the purpose of perpetuating vested organizational and group interests and where they "create obstacles to the development of general policy," they must be broken. To this end, he would separate the Extension Service and the Farm Bureau, abolish the election features of the P.M.A. committee system, break alliances between colleges of agriculture and special purpose groups, and change the relationships of S.C.S. to the National Association of Soil Conservation Districts. As alternatives he argues for more representatively planned congressional agricultural hearings, for a reorganization of the U. S. Department of Agriculture to break administrative power blocs within the Department, and for an agricultural program jointly formulated and administrated by the agricultural colleges and the U.S.D.A.

For those who are more generally interested in political science, however, these are the points that will stand out in Hardin's book: First, that the scientific and technical aspects of public programs cannot be divorced from broad social considerations, either in policy-making or in administration; second, that in complex programs the synthesizing of policy involves both centralizing and decentralizing processes; third, that the objectives and success of administrative agencies cannot be viewed apart from the "organization and distribution of political power in this country"; fourth, that the centers of policy-making in our governmental structure must always be buttressed by sufficient political and administrative power to offset the drives of special interest groups; and fifth, that government agencies and interest groups must police one another to control power and foster the representative character of organizations.

The analysis and documentation give proof that this book was the product of over a decade of research. To be sure, it contains much that is controversial and many "heads are cracked" in the process, but one must agree nevertheless with M. L. Wilson in his tone-setting foreword that this is a well-balanced study. Students of both politics and administration will do well to apply Hardin's meaningful approach to the problems of agriculture to other fields of public policy.

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*American Foreign Policy and the Separation of Powers.* BY DANIEL S. CHEEVER AND H. FIELD HAVILAND, JR. (Cambridge: Harvard University Press. 1952. Pp. xii, 244. $3.75.)

A noted scientist once remarked that if you catch fish of only a certain size in your net, it proves more about the size of the openings in the net than about the size of the fish in the sea. A great many political scientists, by ignoring this maxim, have misunderstood some of the most important problems in government organization. Since official surveys have usually done their fishing only within the executive departments, scholars have too often ignored the problems arising from the relations of the departments with the Congress.

Messrs. Cheever and Haviland, however, after working on the Foreign Affairs Task Force of the Hoover Commission, saw what the Commission's assignment did not let it study in detail—that the problem of organizing the federal government for foreign affairs was not one that depended entirely, or even primarily, on internal executive organization. They have worked up their courage to deal, in a book of only 244 pages, with the much more difficult area of legislative-executive relations.

Their book consists of, first, a brief sketch of the constitutional framework and administrative organization through which foreign affairs are conducted. Next, in a series of historical case studies, it discusses the way in which our system of legislative-executive relations has affected the conduct of foreign relations from 1789 to the present, giving special emphasis to the crucial decisions in foreign policy of the last few decades. Finally, it analyzes the more important constitutional and administrative issues. Thus the authors paint a picture in broad strokes of the participation not only of the entire executive branch in foreign affairs, but also of the Congress and many of its committees.

In several ways the authors' approach is a useful one. First of all, they show that the problem of coordinating the executive branch of the government depends on the even more difficult problem of coordinating congressional committees. As they say ". . . the Foreign Relations and Foreign Affairs Committees are at present unable to draw together the many elements of foreign-policy activity on Capitol Hill. . . . Other committees jealously guard their prerogatives regarding matters that increasingly are involved in foreign policy, and the Department of State can neglect them only at its peril."

The authors note, too, the effect on international affairs of seemingly technical or procedural details—for example, the rules of the Senate providing an easy procedure for amending a treaty, and the practice of enacting bills not as permanent legislation but with frequent dates of expiration in order to bring executive business more under the influence of congressional committees.

Most important, they take into account the impact of Congress on the internal administration of the executive branch, especially through its powers of investigation. In doing so, they have had to rely mainly on political and diplomatic history for their material; their analysis of such points would be much stronger if more material were available like Leonard White's administrative histories, or the studies of the Committee on Public Administration Cases—both of which the authors use as much as they can.

By such an approach, which is quite different from that of those who study either diplomacy or administration in a constitutional vacuum, the authors come to a generally realistic appraisal of their problem, and avoid the temptation to prescribe some of the usual constitutional cure-alls.

In this respect, however, the authors' conclusions are a triumph of their common sense over their fundamental theory. As the title indicates, their guiding hypothesis is the question whether the separation of powers is not the principal difficulty in the administration of our foreign policy. But they do not define the problem precisely enough to see whether the trouble is really the separation of powers as prescribed in the Constitution, or the various detailed checks and balances which have developed historically.

If the separation of powers is the fundamental trouble, the only real remedy is to adopt a unification of powers. But which variety? The authors note the great difference between the French and British types of unification of powers; in various passages they seem to fear the French version more than they envy the British. In specific terms their main worry is about the ways in which Congress fails to coordinate itself, and congressional committees make difficulties in the conduct of foreign affairs. In matters like this, of course, the French legislature and its committees, in spite of the unification of powers in France, are much more like their American than like their British counterparts.

The authors had no trouble in deciding to recommend a constitutional amendment to abolish the two-thirds rule for the ratification of treaties. By contrast, after setting themselves the problem of the separation of powers, they seemed to fumble the issue, recognizing that any attempt to adopt a parliamentary system of government would "produce a hybrid that might create more problems than it would solve." It is a pity that, having come to this sensible conclusion in spite of their hypothesis, they did not go back and make their statement of the theoretical issue more precise, and perhaps even revise their title accordingly.

Nevertheless, *American Foreign Policy and the Separation of Powers* is a book that was certainly worth doing. It is as difficult as it is necessary to tackle the problems in which the fields of international affairs, constitutional law, and public administration are related to each other. This book is one that will be suggestive and stimulating to the scholar and interesting to the general reader.

DON K. PRICE.

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*Titoism and the Cominform.* BY ADAM B. ULAM. (Cambridge: Harvard University Press. 1952. Pp. viii, 243. $4.00.)

*Tito's Communism.* BY JOSEF KORBEL. (Denver: The University of Denver Press. 1951. Pp. viii, 368. $4.00.)

Set against the broad historical perspective of Eastern Europe, these two appraisals of Titoism offer an interesting and lively study in contrasts. Aided by the tools of precise and distinguished scholarship, Professor Ulam probes profoundly, while ex-Ambassador Korbel's personalized approach to the intricate problems of Titoism moves on a lighter and primarily biographical plane. On the one hand, *Titoism and the Cominform* is bound to enrich the doctrinal contents of Eastern European political research; and on the other, *Tito's Communism* will contribute to the storehouse of practical illustrations drawn from field-work. Students of this area stand to profit considerably from both volumes, despite their sharp differentiation in methodology, scholarship and theoretical conclusions.

In Dr. Ulam's work the reviewer is most favorably impressed by the combination of comprehensive knowledge and purposeful modesty which serves to narrow the all-too-broad scope of research on the entire satellite area of Eastern Europe. Ulam wisely centers his attention on the Communist parties of Yugoslavia, Poland and Bulgaria, touching only tangentially on the most pertinent pro- and anti-Titoist developments and personalities in such countries as Hungary and Rumania. The author's choice of primary targets is amply justified by his own linguistic skills and academic predispositions, as well as by the depth and extent of the Titoist movement in the countries of his selection. In a field noted for indiscriminate and omnivorous, rather than careful and systematic research methods, Professor Ulam's attempt to avoid the pitfalls of uncharted territories is praiseworthy indeed.

In this reviewer's opinion the two salient points of *Titoism and the Cominform* are the thoughtful analysis of the crisis of June, 1948, which decisively shattered the solidarity of the communist bloc and "raised in the outside world a variety of hopeful expectations, some reasonable, others fantastic" (p. 107), and the detailed discussion of analogous crisis symptoms which have emerged in the Polish Communist party. The latter slowly but inevitably paved the way for the explosive Gomulka conflict and for the political demise of the party's powerful Secretary General. These highlights of the book are successfully buttressed by accounts of such secondary phenomena as the Rajk trial in Hungary, the Kostov case in Bulgaria, and the first rumblings of massive, top-to-bottom "purges to come" in Czechoslovakia and Rumania.

In the final chapter of his work Professor Ulam examines Titoism as a current historical phenomenon. Here he is obviously beset by one of the principal problems and irritants of scholars in the Eastern European field. In a political area where the doctrine of ceaseless change appears as the only feature of continuum or permanence, it is almost impossible to formulate judgments *sub specie aeternitatis*. Thus it is particularly difficult to categorize and evaluate Titoism in a definitive manner since in its initial four-and-a-half year phase this movement could barely afford to harden its ideological arteries. The author by necessity confines himself to a few cautious and tentative conclusions. He correctly diagnoses Titoism as "a grave and recurrent but not fatal disease of Communism" (p. 232), whose political character and long-range historic impact cannot be fully determined at this point. Dr. Ulam's book is meticulously documented throughout; it also has a first-rate bibliographical note and a useful index.

In his *Tito's Communism*, Josef Korbel retraces his personal experiences as Czechoslovak Ambassador to Yugoslavia in the immediate post-war period. Beyond the now familiar discussion of the partisan movement the author succeeds in drawing a valuable political profile of Tito, rich in minor details and helpful in interpreting the enigmatic conduct of the Marshal. The most important chapters are those dealing with the Yugoslav Communist party and its leaders, religion, the silencing of the opposition, Tito's foreign policy, and the "heresy" itself, climaxed by Tito's determined struggle against the Cominform. The weakest and least instructive sections are those concerned with politics and the law, economic affairs, and foreign trade. Here the author contributes little to the vast body of information now generally available on Yugoslavia.

One of Dr. Korbel's principal observations concerns the nature of the struggle between Stalin and Tito. In his opinion the background of the conflict is primarily psychological and not ideological or economic. Even while the Communist party of Yugoslavia gave full support to the expansionist and aggressive foreign policy of the U.S.S.R., "Moscow failed to understand that Marshal Tito . . . national hero and dictator, was a different person from Josip Broz, once underground agent of the Third International" (p. 300).

Although *Tito's Communism* is a significant work, a halting and uncertain use of the English language detracts from its overall value. Careful editing could have improved immeasurably the general readability of the book, whose fund of lively information and timely ideas should appeal both to the nonspecialist and to the student of Eastern European politics.

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*Revolution in China*. BY CHARLES PATRICK FITZGERALD. (New York: Frederick A. Praeger. 1952. Pp. ix, 290. $4.50.)

Although the author of *Revolution in China* disclaims intention to present in it a history of the Chinese revolution, he avoids the error of confusing the Chinese revolution with some particular phase of it. Thus his generalizations are in relation to a continuing process. Possibly because he believes that "Revolution in China is primarily the concern of the Chinese people, who suffer, or benefit, from its result" (p. viii), he tends to view it, in its several phases, as finding its causation in the Chinese environment even where it can be viewed as a reaction against Western imperialism. In this respect he is particularly concerned that its present communist phase be appraised as fundamentally Chinese rather than deriving strength or weakness from the soundness or lack of wisdom of Russian direction and support, or as something that may fall apart in terms of Sino-Soviet rivalries.

Mr. Fitzgerald's thesis as to revolution in China, from the point of view of success or failure, is that it grows out of the problems of livelihood of a peasant population and is given direction and content by the scholar class. Thus there is success in the attainment of revolutionary objectives when the two classes come into satisfactory combination against the established order. The Kuomintang was successful in combining the two elements against the war-lords, reformulating the national tradition in terms of nationalism. "The military rule had alienated both scholars and peasants; it had defied every moral restraint and outraged every hope of improvement; it was the direct cause of the second phase of the Chinese Revolution" (p. 44). But this combination was almost immediately broken up because of the failure of the Kuomintang to develop a program of reform in the interest of the peasantry. As the author puts it: "But the land problem, the peasants and their poverty remained virtually as before. There was as yet no new institution which promised to restore the fallen power of civilian control, there was no ideology to cement the new society, no objective beyond a distant and unreal promise of a democratic constitution and the still unsatisfied demands of nationalism" (p. 61). In his view, the split which occurred in 1927–28 was what destroyed the unity between peasants and scholars. "The peasants, suppressed and uncared for by the reaction, rallied to the Communist Party, when, a little later, that party dropped its dogma and took note of reality. The scholars, the educated class, still imbued with nationalism and believing that the Kuomintang was the party which stood for an independent China rather than subservience to Russian orders, rallied around the new regime in Nanking or at least held off from the Communists" (p. 61). But when Japanese pressures began to be applied, it was the Communist party, not the Kuomintang, which first preached the doctrine of national resistance. The Communists also enlisted the support of the peasantry through propagandizing and putting into effect a program of reform in areas under their control, thus standing for "the people" in enlargement of their role as the party of the proletariat. The scholars, especially those of student age, began to move over to the Communist party during the period of national resistance to Japan. This movement was completed as disillusionment with the Kuomintang as the instrument of national reconstruction and regeneration set in after VJ Day. By 1949, consequently, peasants and scholars had been brought together in support of the Communists as the party of revolution.

This thesis and its application in analysis of the several phases of the Chinese revolution are what give significance to Mr. Fitzgerald's study rather than additional information on the inception and the course of the revolution. He presents a point of view which cannot be disregarded, whether or not it is completely accepted, by the student of Chinese development. This is also true of the analysis which he makes, which in some respects presents a fresh method of approach to the Chinese revolution. From this point of view his analysis of "Christianity in the Chinese Revolution" (Ch. 5) and of "Revolution and Orthodoxy" (Ch. 6) is most important. On the other hand, his analysis is incomplete because of his failure to devote special attention to the scholar class as such from the point of view of changes in its composition and training and of the effects on it and its role of the social and economic changes in China resulting from the Western impact. A corresponding weakness of the treatment results from almost complete failure to relate analytically the changing social and economic aspects of the revolutionary process in each phase to the political and ideological. These failures, and some misstatements, do not, however, take away its significance from the book. While it cannot be viewed as the definitive treatment of the Chinese revolution, it is a study with which every serious student needs to be familiar.

HAROLD M. VINACKE.

*University of Cincinnati.*

*The American Record in the Far East, 1945–1951*. BY KENNETH SCOTT LATOURETTE. (New York: The Macmillan Company. 1952. Pp. 208. $3.00.)

If the new national administration were inclined to brief itself on the past six years of our Asiatic policy, it would do well to require this concise appraisal as a reading. But if its purpose were further to discredit the statesmanship of Acheson or the policies of Truman, it might better ignore this book.

Professor Latourette brings to his latest volume a lifetime of scholarship in Asiatic affairs. Though his scholarship is not obtrusive, it is clear that only substantial erudition would make it possible to draw out the main strands of our policy in eleven brief essays.

In the complex fabric of past relations in Asia the author finds three strands: bipartisan policy in the Far East, an ever-widening scope of American action, and more consistent American intervention than in Europe. Following Japan's defeat the emergence of Asiatic nationalisms, the spread of communism, and the polarization of the world's power made our embroilment in Asia more difficult. Latourette cuts through the maze of discussion over recent policy to conclude that we have had a "consistent and comprehensive policy." The seeming confusion is attributed to the nature of the democratic process, which necessarily and rightly thrusts into the public arena many voices and many points of view. The principles he discerns are these: (1) an identification of the interests of Americans with the interests of Asiatics, (2) the containment of communism, (3) the use of armed force in such containment when it appeared essential, (4) awareness that our policy in Asia should not be executed in a vacuum but should be an integral part of our world-wide policy, (5) defense of American territory, and (6) fulfillment of our obligations as a member of the United Nations.

In describing the application of these main policy principles Latourette devotes a chapter or more to each region. In his evaluation of American administration of the Philippines, he cautiously indicates our success in education, public health and public works and our failure in agrarian reform. It is regrettable that there is no mention of the contributions of Magsaysay, both in combating the Hukbalahap menace and in raising the standards of government. His analysis of our record in Japan is unusually well-balanced and perceptive. He is not hesitant to praise MacArthur as the administrative genius of the occupation—which indeed he was. Neither does he hesitate to approve his removal as Supreme Commander, saying that his recall was salutary in Japan as an object lesson in civilian control of the military. The political reforms begun in Japan were well conceived; the problems remaining are largely economic. In Indonesia and Indochina our inclinations against colonialism are overridden by our efforts to contain communism; hence we incur the disaffection of India by supporting the Dutch and the French.

It was our policy in China which suffered the greatest defeat. But the communist victory is by no means a direct result of American policy. The author points out the great ideological vacuum existing in China because of the decline of Confucianism, a decline largely the result of the intrusion of Western culture. Coupled with a growing intolerance of foreign imperialism, it created an ideal situation for the spread of communism. Latourette implies that the superior discipline and dedication of the Communists appealed effectively to the Chinese masses. He doubts if we could have pursued a policy different from that followed, although he concedes some mistakes were made. The United States would have had a "cleaner record" had we not sanctioned Russian re-entry into Manchuria by the Yalta agreement, but Latourette feels that Manchuria most certainly would have been controlled by the Chinese Communists who perhaps would have let in the Russians even if there had been no Yalta commitments. The chapter on China ends on a note of optimism. Communism is by no means the last stage of the Chinese revolution, and the influence of American democracy has been subtle but profound. Certainly the history of China conquered by Mongols and later by Manchus holds some hope for the belief that what results from the impact of Russian communism on Chinese culture will be a variant not very much like the former. But the pervasive penetration of communism may be different in quality than the impact of other alien cultures in Chinese history. The Mongols had no exportable piety of messianic quality. The Manchus easily absorbed Confucian techniques if not values. The differences between communism and earlier infusions of foreign ideologies cast doubt on how repetitive history may be in this instance.

Korea, that "Land of Morning Calm," in which there has been no real calm for half a century and more, is treated with perception and sympathy, and our policy there is defended.

Professor Latourette offers no solution to our problems in Asia except to approve the general direction of our policy. While conceding certain errors of judgment, these he ascribes to our impatience as a people, our immaturity as a nation, and partisan distortions.

Students of Asiatic affairs are deeply indebted to the American Institute of Pacific Relations for making this publication possible, and to Professor Latourette for reducing a maze of conflicting complexities to comprehensible essentials.

RALPH J. D. BRAIBANTI.

*Kenyon College.*

*The Australian Party System.* BY LOUISE OVERACKER. (New Haven: Yale University Press. 1952. Pp. xiii, 373. $5.00.)

Over the years a few political scientists have found in Australian government and politics subjects of unique interest. In Australia a British-type cabinet government is based upon an American-type written, federal constitution; voting is compulsory; appeal from the Australian courts to the Judicial Committee of the Privy Council is possible still; the control of public finance has become centralized to a degree that would seem incompatible with a federal system; and since federation in 1901 Australian governments have been willing to experiment with various schemes for nationalization, regulation, and social welfare. Now a first analysis of Australian parties—which have some unique features of their own—comes as a valuable aid to understanding many of the unusual political developments; and students who have not worked in Australia, and experienced the serious lack of documentation, memoirs, and basic research, will hardly appreciate the great effort required to produce the volume.

Professor Overacker's study is concerned essentially with the development of Australian political parties and a description of their present organization and methods of operation, as the succeeding summary of some of the salient points in her discussion will show. The Labor party is the most permanent feature of Australian politics, for non-Labor parties, although governing nationally for about 34 of the 52 years, have formed, dissolved, and reappeared under new names. Consequently, Labor origins, programs, and organization are explored more exhaustively than those of the other parties. This is justified by Professor Overacker's view that "The matrix of Australian politics is the Labor Party, and Australian politics reflects working-class rather than middle-class thinking." Causes for this are the working-class origins of most Australian settlers, the lack of an agricultural class of small property owners, the early domination of Australian economic life by large monopolies or combines—often controlled from overseas—and the failure of the great strikes of the 1890's. From this background developed a class consciousness and class unity that is strong and bitter even today, and that gave rise to a disciplined—although not always doctrinally harmonious—Labor party.

At first Labor was a third party trading support for favors from one of the others, but by 1910 Andrew Fisher led a Labor majority and henceforth Labor was *the* party to be reckoned with. A Labor government split over conscription during the First World War and Hughes led a wing of the group into a successful new Nationalist party; a Labor government again divided over depression policies and right-wing Laborites followed Lyons from the Cabinet into a successful new United Australia party; throughout the 20's and 30's both unions and party were weakened by right-left divisions, there were frequent struggles between unions and party, and occasional disputes marked state and federal party relations. Out of all this came, however, the insistence on majority rule and party discipline that in 1943 and 1946 brought political dividends, if sometimes only "artificial unity." Party candidates pledge in writing to support the party program, endorsement by the party executive of all candidates is required, and all parliamentary party moves (including the choice of leader and of cabinet members) are based on majority decisions in caucus. These procedures are followed nationally and in the states.

Since 1919 a minority Country party—a party that "guards its independence jealously, drives a hard bargain, and exerts an influence which is negative as well as conservative"—has held enough seats to prevent any other non-Labor party from governing except in coalition. Such coalitions have been marked usually by bickering and friction, although the present Liberal-Country government has displayed fewer differences than usual.

The new Liberal party, growing out of a united opposition to certain Labor proposals for constitutional amendment, and out of a series of "unity conferences" stimulated by opposition leader Robert Menzies, was born in 1945. By close cooperation with the Country party, a "me too" program in support of Labor's social legislation, and by capitalizing on public discontent with certain Labor policies (notably continued petrol rationing and efforts at bank nationalization), Labor was defeated in 1949 and again in 1951. It is more likely that the Liberal party will survive defeat than was true of earlier non-Labor parties, for the party has attempted to build strong organizations in each state, to divest itself of the charge that Melbourne business finances and controls it, to interest women in greater political activity, to recruit promising younger men as the party's candidates in many areas, and to build a national secretariat to carry on continuous research and publicity.

Rather surprisingly, Australian Labor has never created such a secretariat and there is no Australian equivalent of Transport House. Further, Australian Labor has tended to be hostile to "intellectuals" and most active Labor politicians still come to office via the trade union route. This has handicapped the development of more effective leadership. On the other hand, Menzies and Fadden (Country party leader) also have been criticized for keeping power in "old hands" and not allowing younger members a greater role in party decisions. The government parties also caucus; and while discipline is not so formally exercised as it is by Labor, the practical result is about the same.

One might wish that Professor Overacker had attempted to describe the general outlook and expectation from life of the "average Australian," for his attitude profoundly influences the Australian political climate and leadership, but such an ambitious effort is perhaps better reserved for an entire book. Others will feel that her admiration for the Labor party stems in great measure from respect for its aims and ideals of an earlier day, and that too little criticism is levied against the present labor movement for its frequent failure to act in the national interest and for lack of constructive leadership. But minor criticism aside, this extremely useful study has brought together for the first time an immense amount of detail, and it is certain that Australian scholars as well as American will welcome this full and orderly explanation of the Australian party system.

JAMES R. ROACH.

*University of Texas.*

*Christian Democracy in Italy and France.* BY MARIO EINAUDI AND FRANÇOIS GOGUEL. (Notre Dame, Ind.: University of Notre Dame Press. 1952. Pp. x, 229. $4.00.)

Because the pragmatism and materialism of the liberal philosophy and its socialist offshoot were irreconcilable with Catholic metaphysics and also were mortal enemies of the traditional regimes with which the Church had established a *modus vivendi,* the spread of dogmatic individualist and collectivist thinking in the 19th century had the effect of excluding practicing Catholics for generations from political participation in France and Italy. In these nominally completely Catholic countries the entire political class was avowedly hostile to the Church. Until well into the present century Church policy was frequently applied in ways which discouraged participation by communicants in any but the most traditional and undemocratic political movements.

Certain developments have recently altered this situation. Dogmatic individualism, or "economic liberalism," suffered its death blow in the disappearance of the true world market in the period between the world wars. Dogmatic collectivism somewhat later ceased to pass as a democratic trend, once the true costs exacted by the Russian Communist transformation became widely known and believed. The Church lost any hope of the revival of the older type of traditional regime, toward accommodation with which its policy had formerly been directed. In these circumstances large-scale Catholic political movements professing democratic principles and social reformistic aims suddenly became major factors in the politics of postwar Italy and France.

The Popular Republican Movement in France and the Christian Democratic party in Italy profess a positive doctrinal unity embodied in Christian principles. To the English-speaking observer, however, accustomed to such professions as a normal feature of politics, their most notable characteristic is their failure to fit the pattern of dogmatic differentiation between individualists and collectivists, previously universal in continental democratic politics. Here are parties very much of the English or American pattern, professing no precise political doctrine and securing support from widely differentiated segments of the social structure. Not only must they be accepted as sincerely democratic in aim, but insofar as successful democracy in the stable democratic regimes has been embodied primarily in the compromise of clashing viewpoints and in the adjustment of conflicting group claims, these parties appear as almost the first beginnings of practical democratic politics in the countries involved.

Unfortunately the recent strength of this trend is an accident of European political history, and it is by no means certain that European publics will readily accept for long an undogmatic politics or that the leaders and subleaders of Christian Democracy are undogmatic through choice and not merely because of a lack of long exposure to the political battlefield. Many traditionalists in France before the creation of the separate Gaulist movement supported the P.R.M. as the least dangerous of the various reformist trends which monopolized politics immediately after the war. A similar temporary Fascist vote undoubtedly inflated the early Christian Democratic plurality in Italy. A large part of the activists of both movements (necessarily so in the case of Italy) have an abnormally short backlog of political experience.

In the present book the relatively short and possibly meteoric careers of the two Christian Democratic parties are analyzed with critical realism. Some cautious attempts are made to forecast their futures. Only the Italian party has in any real sense been in power. It would appear that its record will not be attractive enough to secure for it a renewed parliamentary majority. This prospect depends to a great extent upon the handling of economic and social reform questions by the de Gasperi government. These questions and the legislation and administration in respect to them are inadequately explained, most attention being given to constitutional questions and to party organization. In France the P.R.M. has a reformist record of a more definable character dating from its association with the Socialists and Communists in the immediate postwar coalitions. Perhaps for this reason the treatment of this movement seems more complete and less weighted toward purely political or doctrinal matters.

G. LOWELL FIELD.

*University of Connecticut.*

*International Technical Assistance; Programs and Organization.* BY WALTER R. SHARP. (Chicago: Public Administration Service. 1952. Pp. xi, 146. $2.50.)

Dr. Walter R. Sharp has performed a considerable service by preparing the best published "global inventory" of the organization and operation of the principal technical assistance programs through 1951. The volume will be especially useful to those depending upon published material in their professional work, in view of the "public relations" and "congressional presentation" character of most of the information released by the government during the past two years.

The best chapter, in the opinion of the reviewer, is the one on the United Nations program. The sections on the Technical Cooperation Administration program (U. S.) and the Far Eastern program of the M.S.A.(E.C.A.) are also very well done. The material presented on the Colombo Plan programs and those of the Organization of American States is useful and informative. Many classic problems of public management are illustrated and described as they have appeared in the operation of these programs. The appalling complexity, resulting in part from the participation in program management of so many governments and international organizations, as well as their parts and subparts, is abundantly exemplified. One is tempted to remark, "Seldom have so many administered so little."

Professor Sharp appears less successful in "identifying the chief administrative difficulties that have had to be faced," and in offering "tentative suggestions as to . . . improving their operation." According to the Foreword, this volume was intended only to lay the basis for such a difficult task. Nevertheless, it may be questioned whether the disclaimer of concern with the "rationale of technical assistance" and with "the substantive impact of major aid programs" was wise, in view of the ultimate objective. Perhaps the Public Administration Clearing House is more interested in "management" than in "administration." At any rate, if our concern is with basic analysis pointing to solutions of major difficulties in program administration, do we not have to attend, on the one hand, to the political realities which condition basic governmental structure, and, on the other, to objectives sought and the subject-matter fields being dealt with?

It is certainly important to be clear and discriminating in categorizing the programs whose administration is being surveyed and analyzed. As Herbert Emmerich once remarked, the term "technical assistance suffers from imprecise definition." The term "Point-Four" arose as a result of a political or editorial accident. At times Dr. Sharp appears to focus on commodity grant and financial aid programs, while at other times he is dealing quite directly with cultural interchange. Private agency programs are included in the historical background chapter but omitted from the others. The discussion of the United States' agency and committee structure is pitched to the totality of its foreign aid programs, of which technical assistance programs are only a small part. Recently much attention has been given to integrating in an organizational sense foreign aid programs with the administration of other branches of foreign economic policy, such as commercial policy. In view of the emphasis placed in this book on the recipient country as a major focus for program integration and coordination, one may question whether technical assistance should be a primary category for purposes of program and organization analysis.

Insufficient attention is given to the role of the field of governmental administration and its linkage with social and economic programs, as for example in the "Bolivian operation." No mention is made of the part that political science and political economy might properly play. In the opinion of the reviewer these topics deserve fuller and more critical attention by the distinguished author of *International Technical Assistance*, his associates and sponsors, and many others. Aside from the potentialities for more specialized contributions from such persons, comparative political economy and governmental administration provide perhaps the best springboards from which to approach the entire institutional side of underdeveloped area programs and to bring overall country programs into line with multiple objectives.

WALLACE PARKS.

*Washington, D. C.*

# BOOK NOTES AND BIBLIOGRAPHY

## AMERICAN GOVERNMENT AND POLITICS

*Intergovernmental Relations in Public Health.* By Laurence Wyatt. (Minneapolis: University of Minnesota Press. 1951. Pp. ix, 212. $3.50.)

*Intergovernmental Relations in Social Welfare.* By Ruth Raup. (Minneapolis: University of Minnesota Press. 1952. Pp. ix, 234. $3.00.)

*Intergovernmental Relations in Employment Security.* By Francis E. Rourke. (Minneapolis: University of Minnesota Press. 1952. Pp. viii, 133. $2.50.)

These three research monographs, the most recently published in the Minnesota series, provide useful and, on occasion, interesting, additions to the literature of intergovernmental relations. As for form, they are well constructed; each is well indexed, and each contains an extensive bibliography. For the most part, the style is simple, the exposition straightforward and easy to follow. More vigorous editing might well have eliminated some of the overly-lengthy discussions of general concepts of American constitutional law and government, and the occasional digressions into matters tangential to the declared subjects of the studies. These are not, however, serious flaws.

Particularly commendable is the evident care with which research has been done into the formal aspects of intergovernmental relations, such as the plans or work programs required by higher levels of government, the audits and administrative reviews, the statistical reports, and the inspections. Federal requirements in each of these programs have been painstakingly digested. As to state requirements of local governments, descriptions of the Minnesota arrangements should at least suggest a starting point for studies in other states.

Considerable attention is paid also to the informal relationships, particularly with field representatives. The extent to which field representation may succeed in decentralizing the supervision of a cooperative program is well demonstrated in Miss Raup's study (pp. 64–69).

The monographs on social welfare and employment security contain, the first as an appendix, the second as a part of the concluding chapter, results of questionnaires sent to appropriate state and national officials to test hypotheses concerning intergovernmental relationships which had suggested themselves to the authors during their study. Mr. Rourke's discussion of the value of such questionnaires and the need for caution in their use merits attention (p. 107).

Finally, these monographs, when read within a short span of time so that all three are relatively fresh in the mind, are highly suggestive as to differences in the overall character of intergovernmental relationships in specific programs. Mr. Wyatt characterizes these relationships in health as being generally very happy for all concerned. It is a rare occasion when supervision from a higher level of government assumes a heavy-handed form calculated to ruffle the tempers of those supervised. Wyatt emphasizes that officials engaged in administering public health programs much prefer persuasion to coercion. These are observations borne out by other studies of intergovernmental relations in health. Harmony in intergovernmental relations can, of course, be quite deceptive, for not infrequently it is a harmony flowing from the absence or laxness of effective supervision. For example, so long as many southern state health officials are permitted to blink the requirements of the Hospital Survey and Construction Act concerning facilities for Negroes, they will remain quite content. In the meantime, however, an important objective of the federal legislation will have been defeated.

Mr. Rourke's research showed much suspicion and resentment existing between the state and federal governments in the field of employment security. His exposition of the factors and special circumstances making for these feelings is well done. In the opinion of this reviewer, Miss Raup has shown the most subtle understanding of the complexities of intergovernmental relationships. Her study reveals a full appreciation of the interplay of force and persuasion, and of those conditions which can make for a willingness to cooperate as well as those which may give rise to the most stubborn opposition. Miss Raup, moreover, has made some effort to describe the sometimes rather devious effects which requirements made by higher levels of government can have upon the overall structure and operations of other governments.—VALERIE A. EARLE, *University of Alabama.*

*The Group Basis of Politics; A Study in Basing-Point Legislation.* BY EARL LATHAM. (Ithaca, N. Y.: Cornell University Press. 1952. Pp. ix, 244. $3.75.)

In this study of the passage in Congress and the veto by President Truman of a bill to "clarify" (i.e., weaken) governmental handling of basing-point arrangements, Earl Latham does an excellent job of tracing the twistings and windings of the American legislative process. To students of legislation much of the ground and fauna are familiar: the flux of group interests, the complex strands of interaction and influence, the splits within and between official and non-official groups, the role of confusion and ignorance on the one hand and of expertise and parliamentary craft on the other, the importance of key personalities in the legislative process, the sense of group interest on the part of House and Senate.

Familiar—yet with a difference. For surely, as Latham suggests, the story of this bill is anomalous, even for Congress: "... an important measure seemingly sponsored by Democratic officialdom was opposed by a majority of the Democrats in Congress and finally vetoed by a Democratic president. The other side of the paradox is the fact that the minority party commanded a majority of the votes under the auspices of majority party leadership" (p. 210). There was an interesting split between the Federal Trade Commission and the Department of Justice, and the Administration's position was obscure until the veto. No wonder the Congressmen were confused.

Equally anomalous was the handling of the bill from the standpoint of procedural due process. It received no hearings in the Senate and no public hearings in the House Judiciary Committee. The only public hearings on the measure were held by a committee that had no jurisdiction over it, and these, Latham feels, were useless as a basis for intelligent policymaking. Legislation was steamrollered through the House and almost steamrollered through the Senate. The data Latham describes raise sharp questions about the capacity of Congress to publicize or clarify policy questions, to pose meaningful alternatives, and to deliberate and legislate in an orderly fashion.

The book has several great virtues. Latham's graceful scholarship and his sardonic insights make the book come alive. The first chapter, "Group Conflict and the Political Process," (substantially reprinted in this REVIEW, June, 1952, under the title "The Group Basis of Politics: Notes for a Theory") is a useful survey of work in this field, with excellent bibliographical notes and with due attention to the important progress made in other fields than political science. On the other hand, his concluding chapter, "Politics as Process," while offering interesting conclusions on the bill itself, carries group theory no further than where it left off at the end of Chapter 1. Secondly, aside from an admirable treatment of the Cement Institute, the book does not go behind the scenes of congressional policy-making in the manner, for example, of Stephen K. Bailey's study of the Employment Act. Such a study of key legislators and their constituencies might have cleared up some of the mysteries surrounding the bill. Unhappily it would call for more time and money than the average college professor can afford.—JAMES MACGREGOR BURNS, *Williams College.*

*Conscription in the United States; Historical Background.* BY JACK FRANKLIN LEACH. (Tokyo, Japan, and Rutland, Vermont: Charles E. Tuttle Publishing Co. 1952. Pp. x, 501. $5.75.)

The history of the subject—in public discussion down to the Civil War, and then in practice—is here set out competently and in detail. The high points are the early scheme of Henry Knox for compulsory service in the militia, Secretary Monroe's plan for conscription near the close of "Mr. Madison's War," and finally, in the Civil War, after all lesser expedients had failed, the draft law of March 3, 1863. The account ends at Appomattox, with a glance forward to the eventual determination in 1918 of the constitutional validity of conscription. The author regards compulsory service as a just and necessary measure.

The research was pursued with an intensity and scope quite unusual for a dissertation. The examination of newspaper files was notably thorough. Litigation was an important part of the story of raising the Union army; Dr. Leach has dug out many instances not found in the reports, although his hand is not at its firmest when dealing with legal questions. The exercise of greater mastery in managing the material—e.g., in recounting debates—would have facilitated the reader's grasp of essentials. The book is, however, in the writing as in the research, a substantial and an honest work.

"Even in World War II and the Korean War, after Americans had become used to a great deal of regimentation and control, some still fret at and use their ingenuity to avoid a draft which is infinitely fairer than that of the Civil War," writes Dr. Leach in his chapter of conclusions. "Americans were not, at the time of the Civil War, and are not yet fully aware of the necessity of paying a heavy price for the right to live in a free land. They have not wholly digested the truism that every privilege has its correlative duty; that enjoyment of life, liberty and property in a democracy carries with it the reciprocal obligation to fight for this Republic's preservation against all enemies, foreign or domestic." If the wrong-headedness with which Madison and Lincoln had to contend manifests itself even now in public discussion, Dr. Leach's book serves, at any rate, to remind us of one of the aspects of national defense in which we have developed maturity and strength.—CHARLES FAIRMAN, *Stanford University*.

*Equality by Statute; Legal Controls over Group Discrimination*. BY MORROE BERGER. (New York: Columbia University Press. 1952. Pp. xii, 238. $3.25.)

Professor Berger, who teaches sociology at Princeton, has made a welcome contribution to the growing body of literature in the civil rights field. The first three chapters, comprising about half the book, are concerned largely with Supreme Court cases dealing with aspects of American class relations. Following a general contrast between the status of civil rights today and during the Reconstruction Era, Mr. Berger summarizes in the second chapter the Supreme Court cases of the period 1868–1937, which in the main tended to buttress the caste order (to use the author's phrase), and then in the third chapter surveys the decisions from 1937 to 1950, which have been in the direction of undermining the caste order. The cases are described carefully and in an orderly way, but on the whole the first half of the book covers familiar ground. The real contribution of the book is in the long fourth chapter, which analyzes in detail the New York (Ives-Quinn) law against discrimination, adopted in 1945, and its administration by the State Commission Against Discrimination during the first five and a half years. While Mr. Berger carefully points out the difficulties of evaluation, nevertheless he reaches the conclusion that the law has been effective in achieving a substantial measure of its objectives. The Commission seems to have scored its greatest success in regard to discrimination by unions, and to have had its greatest difficulties with employment agencies. That the Commission is committed to an educational and conciliatory role, and is unwilling to use the sanctions provided for in the law, is made perfectly clear. The final chapter, drawing upon recent studies by sociologists, psychoanalysts and social psychologists, affirms very strongly, as a scientifically tenable proposition, that discrimination can be controlled by law.—DAVID FELLMAN, *University of Wisconsin*.

*Commentaries on the Constitution; 1790–1860*. BY ELIZABETH KELLEY BAUER. (New York: Columbia University Press. 1952. Pp. 400. $4.75.)

Prior to the Civil War, expositions of the Constitution by members of the bar and bench were primary sources for legal training and important media of constitutional interpretation. The author's purpose, in what is apparently her doctoral dissertation, is to place the constitutional commentaries written between 1790 and 1860 "in their historical setting, to trace the lives of the men who wrote them, to compare them with respect to a few major theories, and to sketch the uses to which they were put when men were aware of their existence." Any one of these several objects requires its own volume. It is questionable if much of significance could be said in the few pages assigned to each.

The discussion of the historical setting consists in little more than a notation of the dates on which the several works were published and a statement that there was a conflict between northerners and southerners over constitutional interpretation. The thirteen brief biographical sketches, about half of the book, include such well known men as Wilson, Kent, Story, and Taylor, as well as some less well known commentators like Peter Stephen Du Ponceau and David Hoffman. Little is added to what we already know about the former, and there is little indication of why we should bother to learn more about the latter. The commentaries themselves are summarized under the topics of "location of sovereignty" and "compact vs. supreme law theory." Story's *Commentaries on the Constitution* are outlined, and in a short but careful discussion of their uses, the author indicates the cases in which the commentaries were cited by members of the bar and justices of the Supreme Court.

Although the author sticks primarily to a summary of what the several commentators wrote, occasionally she lapses into the "real-reason approach"—an occupational hazard—with the result that we get such statements as "Dane opposed the activities of the Convention [Hartford] only because of his legal mind." Despite its deficiencies, which are chiefly the result of the attempt to do too much, Mrs. Bauer has made available a handy summary of the elaborate rationalizations developed to justify the several views of the nature of the Constitution and the federal union and she has provided a convenient reference to the commentators and their works. She closes with an excellent bibliography.—JACK W. PELTASON, *University of Illinois.*

*Administration and the Nursing Services.* BY HERMAN FINER. (New York: The Macmillan Co. 1952. Pp. xiv, 333. $4.00.)

The study of administration has much to gain from careful analysis of administrative problems in particular professions. Similarly, various professions have much to gain from analysis of their problems in the light of more general administrative analyses. Accordingly, when a distinguished political scientist like Herman Finer works as director of a research project for almost a year, and a seminar of 36 nurses and teachers of nursing work with him for five months on this project, much should be learned by both nurses and students of administration.

A substantial amount is learned in this volume. Finer ranges over the administrative universe, gives many points of administrative theory, and has a number of penetrating remarks about nursing problems for administrators. It is true that the book is wordy and poorly organized. It certainly cannot be viewed as a careful study of the administration of nursing. Nevertheless, it should be useful to thoughtful general administrators and nursing administrators in gleaning some of the scraps of wisdom scattered through the volume.

In his introductory qualifications, the author recognizes clearly that the book is not a comprehensive treatise on nursing administration. It is intended to answer these three questions: (1) "Is the science of administration needed in the conduct of nursing service?" (2) "If so . . . how seriously is it needed?" (3) " . . . what inferences are to be drawn for the curriculum of schools of nursing and for the spread of a knowledge of administration among nurses already on the job?"

These questions are answered fairly satisfactorily, though one must hunt around to find the answers. One can also query if 320 pages are necessary to answer these questions. It must be admitted, however, that the answer to the third question is very broad. It includes, for example, a list of 36 novels which nurses should read to broaden their understanding of people. The problem of sex relations between doctors and nurses receives a glancing blow. Robinson Crusoe receives three pages of attention, on the theory that he was becoming a good administrator in learning how to govern himself.

All of these things are relevant and suggestive to the reader who knows much about administration. The reviewer has his doubts, however, about the clearness of the "message" to nurses or to ordinary people.—GEORGE C. S. BENSON, *Claremont Men's College.*

*Training for Specialized Mission Personnel.* BY WALLACE S. SAYRE AND CLARENCE E. THURBER. (Chicago: Public Administration Service. 1952. Pp. xiii, 85. $1.00.)

This survey, sponsored by the Public Administration Clearing House, is concerned with the initial training of the personnel of specialized missions sent overseas by the United States government under programs developed since World War II. The authors describe and evaluate briefly early and present governmental training programs for this purpose (with brief descriptions also of certain business and religious training programs for overseas personnel) and point out the problems that persist in their development. In addition, there is discussion of the major elements in a comprehensive training plan, the need for a center of leadership within the government to view the specialized mission training problem as a whole, and the relation of universities and their resources to this problem.

*The CIO and the Democratic Party.* BY FAY CALKINS. (Chicago: University of Chicago Press. Pp. xiii, 162. $4.00.)

Five first-hand case studies (Ohio, Steubenville, Chicago, Rockford, Michigan) of CIO-PAC political activities in the elections of 1950, by the Research Assistant of the National CIO-PAC.

*Monopoly and Social Control.* By Henry A. Wells. (Washington: Public Affairs Press. 1952. Pp. ix, 158. $3.25.)

Mr. Wells—in a book which Wendell Berge, in a foreword, extravagantly calls "the most illuminating document written in our time"—elaborates the argument that there is a conflict between democratic social control designed to maintain competition and fatalistic forces making for concentration of economic power; contrasts American empirical methods with Utopian and Marxian approaches; and analyzes the problems in making anti-trust policy effective.

*The American Socialist Movement, 1897–1912.* By Ira Kipnis. (New York: Columbia University Press. 1952. Pp. 496. $6.00.)

An intensive and well-documented history and analysis of the American Socialist party from its inception through its period of greatest activity and success.

*Report on the American Communist.* By Morris L. Ernst and David Loth. (New York: Henry Holt & Company. 1952. Pp. 240. $3.00.)

A socio-psychological analysis of the motivations inducing persons to join, to remain in, and finally to renounce the Communist party, based on a case study of some 300 former Communists. Some of the authors' conclusions will come as a surprise to the reader, and the work as a whole represents a new approach to the study of the Communist problem in America.

*The American Diaries of Richard Cobden.* Edited by Elizabeth Hoon Cawley. (Princeton: Princeton University Press. 1952. Pp. vii, 233. $4.00.)

Richard Cobden's hitherto unpublished diaries of his trips to the United States in 1835 and 1859, with annotations and a lengthy introduction by the editor.

*American Beginnings; Highlights and Sidelights of the Birth of the New World.* By Jarvis M. Morse. (Washington: Public Affairs Press. 1952. Pp. ix, 260. $3.75.)

A survey of selected writings on British-America published before 1775. Each work is summarized together with information as to its author and the historical circumstances under which it was written.

*Thomas Mifflin and the Politics of the American Revolution.* By Kenneth R. Rossman. (Chapel Hill: The University of North Carolina Press. 1952. Pp. ix, 344. $5.00.)

A first biography of a Revolutionary quartermaster-general, president of the Continental Congress, member of the Federal Convention from Pennsylvania, and governor of Pennsylvania.

*Elias Boudinot; Patriot and Statesman, 1740–1821.* By George Adams Boyd. (Princeton: Princeton University Press. 1952. Pp. ix, 321. $5.00.)

A carefully written biography of a president of the Continental Congress, who later served in the first three Congresses under the Constitution and as director of the U. S. Mint.

*R. R. Bowker; Militant Liberal.* E. McClung Fleming. (Norman: University of Oklahoma Press. 1952. Pp. xv, 395. $5.00.)

Biography of a many-sided American of the late 19th and early 20th centuries. Bowker, who was long connected with *Publishers' Weekly*, was also a founder of the American Library Association and the *Library Journal*, an ardent advocate of "good government," and an able industrial executive.

*McCarthy; The Man, the Senator, the "Ism."* By Jack Anderson and Ronald W. May. (Boston: The Beacon Press. 1952. Pp. vi, 431. $3.75.)

A critical journalistic treatment of one of the most controversial political figures of the last decade and of the techniques associated with "McCarthyism." Based on numerous interviews and available newspaper and personal files.

*Politics, Parties, and Pressure Groups.* By V. O. Key, Jr. (New York: Thomas Y. Crowell Company. Third Edition. 1952. Pp. xvi, 799. $5.50.)

An extensive revision of a well-established textbook, incorporating more recent research contributions and significant political developments. Two relatively theoretical chapters have been dropped to make way for new materials which generally give greater emphasis to political parties and somewhat less to the data on pressure groups. Much new illustrative material has been added or substituted for that previously used.

*A Future for Nashville.* By the Community Services Commission for Davidson County and the City of Nashville. (Nashville, Tennessee: The Community Services Commission. 1952. Pp. x, 201. $4.00.)

A report with recommendations on the problems of government in Davidson County, Tennessee, in which the capital city of Nashville is located, by an agency authorized in 1951 by the state General Assembly. Recommendations pertain to such matters as city and county home rule, annexation, and allocation of functions between city and county.

*America's Greatest Challenge.* By Walter E. Myer and Clay Coss. (Washington: Civic Education Service. 1952. Pp. 215. $2.75.)

An appeal for an intensive campaign for better political education in the United States both in the schools and throughout the nation as a whole.

*The Nature of Gambling.* By David D. Allen. (New York: Coward-McCann. 1952. Pp. 249. $3.50.)

A study of the role and function of gambling in society. Three basic propositions are formulated and examined: whether gambling is a fundamental human activity, whether it is harmful, and whether it can be suppressed.

## SELECTED ARTICLES AND DOCUMENTS ON

## AMERICAN GOVERNMENT AND POLITICS

**FRANKLIN L. BURDETTE**

*University of Maryland*

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## FOREIGN AND COMPARATIVE GOVERNMENT

*A Documentary History of Chinese Communism.* By Conrad Brandt, Benjamin Schwartz, and John K. Fairbank. (Cambridge, Mass.: Harvard University Press. 1952. Pp. 552. $7.50.)

For twenty-eight years, as Mao Tse-tung put it, the Chinese Communist party "had to travel a zigzag path" before it could gain its basic victory in 1949. The numerous zigs and zags along the way are clearly revealed in the forty documents brought together by Messrs. Brandt, Schwartz, and Fairbank. They range from the First Manifesto of the CCP on the Current Situation (June 10, 1922) through the Organic Law of the Central People's Government (September 27, 1949), but cover the period from 1922 through 1945 with much greater intensity than the postwar period. The documents are carefully edited and readably translated; they have been selected with a sound sense of discrimination; and many of them, exhumed from obscure and forgotten sources, are made available for the first time to the English-reading public. On every score, the *Documentary History* is a notable contribution to our knowledge and understanding of the Chinese Communist mentality. The work is buttressed by a chronology, a bibliography, and a glossary of terms that make it an important tool for future research. The documents are introduced, usually in groups of two or more, by comprehensive and scholarly commentaries that reflect a high quality of scholarship. Standing by themselves, these commentaries contribute notably to the analysis and interpretation of the Communist movement; taken in conjunction with the documents, they form part of a work that for some years to come will be a standard work of reference on the subject.

The author-compilers direct their attention almost exclusively to the evolution of the "party line," resisting the temptation to deal with more detailed matters of administrative routine or with specific substantive policies. The party line rationalizes the relations between the CCP and the CPSU; it reveals changing tactical concepts in relations with the Kuomintang and with the Japanese enemy; it shows how Marxism-Leninism came to be adapted to the special requirements of the revolution in an agrarian China. Essentially, the party line shows how far the Chinese Communists of 1949 had come from the romantic Marxists who founded the party in 1921 under the illusion that their revolution would liberate the Chinese people from the tyrannies of that time. The old tyrannies have, perhaps, been demolished; but new tyrannies have taken their place and the liberation of the Chinese people still remains for the future.—H. ARTHUR STEINER, *University of California (Los Angeles)*.

*The Left Wing in Japanese Politics*. BY EVELYN S. COLBERT. (New York: Institute of Pacific Relations. 1952. Pp. xii, 353. $4.50.)

This timely, comprehensive study provides the most succinct and enlightening discussion of the origin and development of proletarian groups in Japan which has yet come to this reviewer's attention. The volume comprises five sections which are concerned with various stages in the evolution of the Socialist, Communist, and lesser left wing groups in prewar and postwar Japan. Section I describes the proletarian movement in Japan during the interim between the two World Wars, the rise of national socialism in Japan and the consequent repression of left wing groups, and the activities of left wing Japanese leaders in exile in both Communist and Nationalist China. Section II provides an excellent summary of the revival of the Socialist and Communist parties in the immediate postwar period and describes the tremendous growth of the trade union movement (from some 400,000 members in the period prior to 1940 to over 6,500,000 in 1948) during the early years of the occupation. Sections III and IV give a concise account of the programs of the left wing parties, an almost chronological treatment of their activities during the years 1945–1947, and cover the period of the coalition cabinets (Socialists, Democrats, and People's Cooperatives) of premiers Katayama and Ashida. Section V deals with major left wing developments between January, 1949 and June, 1950, including an interesting discussion of the decline of the Communist party, due in large measure to its controversy with the Cominform, to popular indignation over Soviet obstinacy on the repatriation issue, and to Soviet accusations against the Emperor.

Very useful biographical data on Japanese left wing leaders are conveniently summarized in the appendixes together with a roster of the leaders of each of the left wing parties. This study should be of real utility to students of Far Eastern international relations and of the governments of the Far East. Of minor consequence, but requiring remedy in subsequent editions, is the evidence of careless proofreading found on page 59.—DONALD M. CASTLEBERRY, *San Francisco State College*.

*Southeast Asia*. BY E. H. G. DOBBY. (New York: John Wiley & Sons. 1951. Pp. 415. $5.00.)

Professor Dobby has undertaken the ambitious task of presenting in one volume "a picture of environmental conditions and human adaptations in Southeast Asia." Approximately half of the volume is devoted to a detailed description, some of it in highly technical terminology, of the natural landscape of Southeast Asian countries and island groups. The other half deals with the cultural (economic) and social "landscapes" of the component countries, followed by four concluding chapters on so-called human geography (agriculture, fisheries, industry and trade, peoples and politics). The author presents an enormous mass of useful reference data interlarded with some searching analyses. The book is illustrated by 120 maps and charts of varying importance.

As a pioneering effort in a field covered elsewhere, if at all, only in a fragmentary way the book is a welcome addition to the growing literature on Southeast Asia. It is nevertheless uneven in its coverage of the area and in the quality of its treatment of the various regions. The author, for example, devotes some sixty pages to Malaya, the area he knows best, as compared with twenty-eight to Java-Madoera and twenty-nine to Siam. Dutch reviewers have pointed out the handicap of his unfamiliarity with materials in that language. When he leaves the field of his basic competence, natural geography, and undertakes to generalize on historical aspects or social, economic, and political conditions, annoying errors creep in as well as doubtful generalizations. For example, the author underestimates the adverse effects of the recent war on Burma; he is unaware of the vast potential in rice lands still available for development in the Irrawaddy delta; and he makes the erroneous assertion that Burmese Buddhists hold fishermen in disrepute because they destroy life. Mr. Dobby concludes with a gloomy discussion of the prospects for the future of the emerging national states in terms of "congenial poverty," which lacks both historical perspective and an assessment of dynamic political factors. Mr. Dobby's conclusions, in other words, reflect the dismay of the colonial apologist. Mr. Dobby would probably have made a more solidly useful contribution if he had recognized in larger measure the limitations of the geographical approach to political and social problems.—JOHN F. CADY, *Cornell University.*

*Public Administration in Siam.* BY W. D. REEVE. (New York: Royal Institute of International Affairs. 1951. Pp. vi, 93. $2.00.)

Mr. Reeve's description of the governmental administrative agencies of Siam is one of a series of such studies sponsored by the Institute of Pacific Relations. The author served for some twenty years as administrative adviser at Bangkok, and his account concerns primarily the central administration of Siam since 1932. Background factors are sketchily presented; provincial administration is treated only superficially; no attempt is made to assess the political awareness of the Siamese villager or his attitude toward the expanding agencies of government. The author makes some penetrating comments concerning such administrative problems as bottlenecks, overstaffing, and favoritism, but he does not discuss political dynamics, the stultifying effects of military interference, and the basic problem of developing a public consciousness to which governmental servants can be held responsible for their actions. The book contributes much to our understanding of governmental problems in Siam, but Mr. Reeve could probably have told us much more if he had not been so concerned to avoid offending Siamese sensibilities. A realistic appraisal of government in Siam has yet to be made.—JOHN F. CADY, *Cornell University.*

*Population Growth in Malaya; An Analysis of Recent Trends.* BY T. E. SMITH. (New York: Royal Institute of International Affairs. 1951. Pp. viii, 124.)

It is a pleasure to acknowledge the excellence of this short but scholarly study of the demographic situation in Malaya, the first effort of its kind for any country of Southeast Asia. The author is a British member of the Malayan Civil Service who studied at Princeton University's Office of Population Research in 1949–50 on a Commonwealth Civil Service Fellowship. He utilizes as principal sources the censuses of 1931 and 1947, exposes them to expert scrutiny, and then stays within the bounds of his dependable information. After an introductory chapter on general trends, he describes in turn the Malaysian, the Chinese and the Indian populations. Concluding chapters analyze the vulnerability of Malaya to the vagaries of the world market for rubber and tin, and estimate the prospects for achieving some kind of a demographic balance in terms of productivity and resources. Much of the author's technical analysis of fertility and mortality statistics will be of more interest to the demographer than to the social scientist, but his conclusions are sharply defined. It is clear from his exposition that Malaya cannot be regarded as an area for future immigration from neighboring areas of population pressure, such as Java, China, and India, without aggravating its economic problems beyond the point of possible solution. Here is one study that will not have to be done again soon.—J.F.C.

*L'Europe en face de son Destin.* By EDOUARD BONNEFOUS. (Paris: Presses Universitaires de France. 1952. Pp. 386.)

"Pourquoi le cheminement de l'idée européénne a-t-il été si lent?" asks the author, co-editor of *L'Année Politique* and professor of the Institut des Hautes Etudes Internationales, in the concluding chapter of the volume. And he puts the blame squarely upon the nineteenth century with its nationalism, the new German philosophy which killed humanism, and the German unification under Prussia. For these were, in the author's opinion, the influences which pushed into the background "l'ideé europeénne" which flourished in the eighteenth century. It is this slow "cheminement" of the "ideé europeénne" (which comprises, in the author's connotation, European unity) which is the theme of the book. After discussing in the first four chapters the main factors which helped to shape European thought, the historical origins of Europe, and the earlier attempts to unite Europe both prior to and after World War I, the author proceeds to what is the main part of his book: a detailed description and analysis of the Council of Europe, the Schuman Plan, the European Defense Community, and some other cooperative projects in specialized fields. More than one third of the book consists of documents relating to the various postwar projects of European cooperation.—E.T.

*Soviet Opposition to Stalin; A Case Study in World War II.* By GEORGE FISCHER. (Cambridge: Harvard University Press. 1952. Pp. viii, 230. $4.00.)

The title of this book is somewhat misleading, for only its third part deals with Soviet opposition to Stalin as such, while the first two parts (comprising two-thirds of the book) are devoted to a careful, well-documented, detailed study of General Vlasov's movement from its beginnings until its liquidation and the execution in Moscow of its leaders. A case study of the defection and activities of Vlasov and his associates during World War II does provide a considerable amount of material throwing light on the Soviet opposition to Stalin. Yet much more than that is needed if one embarks upon a general analysis of such a complex phenomenon. Thus the "close interconnection" which the author claims to exist between the first two parts and the third part of the book is not quite as close as it ought to be and the many interesting observations he makes in the last part regarding the "larger problems of Soviet opposition" are only partly based on what can be obtained from a case study of Vlasov's movement. In collecting and correlating materials and documents on this movement Mr. Fischer has certainly made a worthwhile contribution toward a better understanding of what he rightly calls "one of the most dramatic episodes of World War II."—E.T.

*Kuomintang and Chinese Communist Elites.* By ROBERT C. NORTH WITH THE COLLABORATION OF ITHIEL DE SOLA POOL. (Stanford: Stanford University Press. 1952. Pp. vii, 130. $1.75.)

This study in the Hoover Institute "elite" series is a suggestive exploration of the motives and attitudes of the leadership cadres within the Kuomintang and the Chinese Communist party. It is the first serious effort to correlate the social origins and experiences of the leadership cadres with the general political lines of their respective parties, bringing statistical methods to bear upon the data compiled from careful biographical studies.—H.A.S.

*Democracy At Bay; A Diagnosis and a Prognosis.* By FELIX SOMARY. (New York: Alfred A. Knopf. 1952. Pp. xiii, 171. $2.50.)

A brief review of the history of democracy from the late 18th century to 1914, an analysis of the impact of the two World Wars upon the democratic movement, and a statement of the dilemmas of present-day democracy.

*British Colonial Constitutions, 1947.* By MARTIN WIGHT. (New York: Oxford University Press. 1952. Pp. xxvi, 571. $8.50.)

A valuable collection of constitutional documents from the dependent empire, superseding the prewar collection by the Foreign Office. A number of constitutions are given in complete detail; others are abridged. An excellent 100-page introduction describes the nature and progress of colonial constitutions and offers a valuable classification of them.

*Democracy in the Dominions.* By ALEXANDER BRADY. (Toronto: The University of Toronto Press. 1952. Pp. viii, 604. $6.50.)

Developments since 1947 are included in this second edition of a useful study of government in Canada, Australia, New Zealand and South Africa, and an added final section compares and generalizes on the significance of social, economic and political trends in the four dominions.

*Racial Separation in South Africa; An Analysis of Apartheid Theory.* BY EUGENE P. DVORIN. (Chicago: University of Chicago Press. 1952. Pp. xii, 256. $4.50.)

An objective and timely appraisal of a crucial area of racial and political tension. In the program known as "apartheid," the Nationalist party of South Africa proposes to divide the Union into separate areas for whites and blacks, and by means of this geographic apartness to reinforce social, economic and political barriers, with the white or European "master race" in complete power.

*The Pilgrimage and After; The Story of How the Congress Fought and Won the General Elections.* EDITED BY DR. N. V. RAJHUMAR FOR THE CENTRAL PUBLICITY BOARD WITH FOREWORD BY GULZARILAL NANDA AND INTRODUCTION BY R. R. DIWAKAR. (New Delhi: All-India Congress Committee. 1952. Pp. vi, 176. Rs. 2/8/-.)

This brief account of how the Congress party fought and won the first elections (1951–52) under the new Constitution of India contains a narrative of the election tour of Jawahrlal Nehru, the Congress president, to all parts of the republic, as well as a summary of the subject matter of some of his principal speeches, an analysis of election results for the national parliament and the state legislative assemblies, and the personnel of the Central and State Congress ministries.—J.B.C.

*Administrative Directory of the Government of Pakistan.* BY THE CABINET SECRETARIAT. (Karachi: Manager of Publications. 1951. Pp. viii, 396. Oblong format. Rs. 4/12/-.)

The directory of the Pakistan government as of November 1, 1951, scheduled to be published once a year, gives in Part I a list of the officers of the various ministries and the departments directly attached to them, and in Part II a list of the subjects dealt with as well as a statement of the distribution of the work among the various branches. Parts III and IV are devoted to the provinces and states, and Part V to the listing of the Pakistan representatives abroad. For the Constituent Assembly only the officers and staff are given, not the members. There is no index to agencies or persons.—J.B.C.

*Prohibition Inquiry Report in Bombay State.* BY SHRI M. D. BHANSALI, I.C.S. (Bombay: Government Central Press. 1952. Pp. iv, 58.)

Total prohibition was introduced in Bombay State on April 6, 1950. A subsequent judgment of the Indian Supreme Court held that the State could not impose a general ban on, but could regulate the possession and use of spirituous toilet or medicinal preparations, thus invalidating some provisions of the Act. The inquiry mentions "the good results which are noticeable in the rural areas and among the poorer classes," but indicates that "except for official effort which is handicapped by finance very little public support is forthcoming, and the enthusiasm which marked the advent of prohibition is found lacking." The report summarizes 39 recommendations looking towards the effective enforcement of total prohibition. —J.B.C.

*Bihar, 1946–51; a Brief Review.* PUBLISHED BY DIRECTOR OF PUBLIC RELATIONS, BIHAR. (Patna: Government Press. 1951. Pp. xii, 254. Rs. 1-8-0.)

This review of the government of Bihar State in India since the Congress ministry took over in April, 1946, discusses a number of points of interest such as agrarian reforms and the abolition of landlordism, the economic and educational development of backward and suppressed classes, and the adoption of Hindi in Devanagri script as the official language. At present the Legislative Assembly transacts its business partly in Hindi and partly in English. —J.B.C.

*Indicador da organização administrativa federal. (Atualizado até 15 de novembro de 1951.)* BY DEPARTMENTO ADMINISTRATIVO DO SERVICO PÚBLICO. (Rio de Janeiro: Imprensa Nacional. 1952. Pp. xx, 600.)

The seventh edition of the Brazilian government organization manual as of November 15, 1951, is the first to appear since Getulio Vargas assumed the presidency again at the end of January, 1951. The manual includes all branches of the government, gives the addresses, organization and functions, with citations to constitutional, statutory and other authorization, but does not give the names of the principal officials. Organization charts are included. The volume concludes with a list of the principal current official periodicals.— J.B.C.

*El gobierno del Sr. Galo Plaza, presidente constitucional de la república del Ecuador, 1948–1952. Tomo IV and V.* (Quito: Talleres gráficos nacionales. 1952. Pp. xli, 739; 526.)

The final volumes of the report on the presidency of Galo Plaza of Ecuador are remarkable in that they reflect an administration which served out the duly elected term until the end of August, 1952. The fourth volume is devoted to "estudios, proyectos e informes técnicos," 1948–1952; and the fifth, designated "Informe del cuarto año de gobierno," includes the farewell address.—J.B.C.

*Der Kampf um den Südweststaat. Verhandlungen und Beschlüsse der gesetzgebenden Körperschaften des Bundes und des Bundesverfassungsgerichtes.* By INSTITUT FÜR STAATSLEHRE UND POLITIK, E.V., MAINZ. (München: Isar Verlag. 1952. Pp. 507.)

A collection of the basic documents in the "Southwest Case," preceding the union of Baden, Württemberg-Baden, and Württemberg-Hohenzollern as Baden-Württemberg at the end of April, 1952.—J.B.C.

*Staatsanzeiger für Baden-Württemberg.* (Stuttgart: Staatsministerium. No. 1–27, April 30–Aug. 16, 1952. 15 DM a year.)

The first three numbers of the official gazette of the new Southwest German state of Baden-Württemberg appeared under the title *Staatsanzeiger für das Südwestdeutsche Bundesland.* The gazette, which appears twice a week, contains a report of the proceedings of the *Verfassunggebende Landesversammlung,* which was elected on March 9th, 1952, and had held four sessions previous to the first number of the gazette. The provisional government or cabinet had been constituted on April 25. In No. 6, of June 4, there is contained a report of the final sessions on May 30 of the *Landtag* in each of the three states of Baden, Württemberg-Baden, and Württemberg-Hohenzollern, which had united to form Baden-Württemberg.—J.B.C.

*Gesetzblatt für Baden-Württemberg.* (Stuttgart: Buchdruckerei Chr. Scheufele. No. 1–10, April 28–Sept. 27, 1952. Pp. 1–36. 12 DM a year.)

The first issue of the law gazette of the new Southwest German state formed by the Union of Baden, Württemberg-Baden, and Württemberg-Hohenzollern, had the title *Gesetzblatt für das Südwestdeutsche Bundesland.* The "Überleitungsgesetz" of May 15 enacted by the Verfassunggebende Landesversammlung settled upon the name Baden-Württemberg for the state, and with no. 2 of May 17 the title became *Gesetzblatt für Baden-Württemberg.* A "Bekanntmachung" of July 8th by the provisional government in no. 7 defines the functions of the ministries.—J.B.C.

*The West German Federal Government.* BY ELMER PLISCHKE WITH THE ASSISTANCE OF H. J. HILLE. (Historical Division, Office of the Executive Secretary, Office of the U. S. High Commissioner for Germany. 1952. Pp. viii, 182.)

General survey of the West German Federal Government from its inception in 1949 to the beginning of 1952. A number of useful charts are appended to the volume.

*Berlin: Development of its Government and Administration.* BY ELMER PLISCHKE WITH THE ASSISTANCE OF ELISABETH ERDMANN. (Historical Division, Office of the Executive Secretary, Office of the U. S. High Commissioner for Germany. 1952. Pp. xii, 257.)

A study of the government of Berlin with major emphasis on the years 1949–1951 and a brief survey of developments since 1945. Includes an appendix of 20 documents relative to the topic.

*Guide des ministères: Revue de l'administration belge, 1952–1953.* (Bruxelles: Secretariat, 37, rue de Pascale. 1952. Pp. 534.)

The second edition of the unofficial directory of the Belgian government is kept up to date by monthly supplements. The volume includes the Royal Palace, the legislative branch, the ministries in alphabetical order, the Conseil d'Etat, the Cour des Comptes, business and other enterprises of the government, provincial and city governments, the ports, political parties, chambers of commerce, etc. There is an index to agencies but not to persons. The official *Almanach royale* ceased publication with 1939, and the only other similar publication has been the long-continuing *Annuaire administratif et judiciaire de Belgique* published by Bruylant at Brussels.—J.B.C.

*Impressa publica Regni Danici 1951. Bibliografisk fortegnelse over statenstryksager og statsunderstøttede publikationer, tilligemed Fortegnelse over publikationer udgivne eller subventionerede af Københavns og Århus kommuner, 1951.* (København: Det Kongelige Bibliotek. 1952. Pp. 92.)

The annual bibliography of Danish official documents which began with the year 1948 has with this volume added the official documents of the two largest cities of Denmark——Copenhagen, and Aarhus. The main part of the volume continues arrangement of the ministries in alphabetical order following Rigsdagen, with indexes to topics and persons. —J.B.C.

East Africa High Commission. *Interterritorial cooperation: Work of the East Africa Central Legislative Assembly* (Nairobi, Kenya. 1952. Pp. 107.)

The report (Despatch 1/52) to the Colonial Office, London, by Sir Philip Euen Mitchell, the chairman of the High Commission, on the first four years of the High Commission, 1948–1951. The New Central Assembly met first for a further four-year period on January 29, 1952. The rather intricate organization of the executive agencies of the High Commission is explained, together with their relationship to the Central Assembly and to the authorities of the three territories of Kenya, Tanganyika and Uganda. The report includes the membership of the boards, committees and councils of the Assembly as of May, 1952, and a list of the publications of these agencies, 1948–1951.—J.B.C.

Israel. *List of Government Publications.* COMPILED BY THE STATE ARCHIVES AND LIBRARY. (Jerusalem: Government Printer. 1952 [5712]. Pp. 62. 200 pruta.)

The careful list of the official publications of the government of Israel reveals that there have been a certain number of items issued in languages other than Hebrew. The main title-page and a brief prefatory note are in Hebrew. —J.B.C.

Nigeria. *Standing orders of the House of Representatives.* (Lagos: Government Printer. 1952. Pp. 40.)

The standing orders for the new legislative body of Nigeria, which began functioning early in 1952, were made by J. S. Macpherson, governor of Nigeria, as of January 9, 1952. The practice of the House of Commons of Great Britain and Northern Ireland is to be followed in case of doubt.—J.B.C.

*The Forgotten Republics.* BY CLARENCE A. MANNING. (New York: Philosophical Library. 1952. Pp. xii, 264. $2.75.)

A study of Latvia, Lithuania, and Estonia, their peoples, culture, and political development from the first century A.D. to their incorporation in the Soviet Union, written by an Associate Professor of Slavic Languages at Columbia University.

*Heroic Finland.* BY DAVID HINSHAW. (New York: C. P. Putnam's Sons. 1952. Pp. xxii, 306. $4.50.)

In nineteen brief chapters the author, highly sympathetic to Finland, covers in a rather general way varied aspects of Finnish life from politics and reparations to music, sports, forests and lakes.

*Contemporary Ethiopia.* BY DAVID ABNER TALBOT. (New York: Philosophical Library. 1952. Pp. x, 267. $4.50.)

The American editor of the government-owned *Ethiopian Herald* describes modern Ethiopia and its progress since Haile Selassie first assumed office in 1916.

## SELECTED ARTICLES AND DOCUMENTS ON
## FOREIGN AND COMPARATIVE GOVERNMENT

WILLIAM H. ROBERTS
*Catholic University of America*

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## INTERNATIONAL LAW AND RELATIONS

*Soviet Documents on Foreign Policy; Volume II, 1925–1932.* Selected and Edited by Jane Degras. (New York: Oxford University Press. 1952. Pp. xxi, 560. $9.00.)

The editor of this collection of documents, Volume I of which was noted in the September, 1951 issue of this Review, continues in Volume II to bring closer to the present the documentary story of Soviet foreign policy. The list of documents from which the editor has made her selection is to be found in her previous publication, *Calendar of Soviet Documents on Foreign Policy* (London: Royal Institute of International Affairs, 1948). This second volume commences with an extract of a speech by Stalin at the Central Committee of the Russian Communist party made on January 19, 1925 and ends with a Tass statement on Soviet-Japanese negotiations for a non-aggression pact released on January 17, 1933. It is particularly valuable as regards Soviet material on Russian policy in the Far East during this period, for many of the documents are concerned with questions of Soviet relations with China, Manchuria, Japan, and other Far Eastern areas. Very significant statements of Stalin made during this period are given; among them is the statement of March 22, 1925 on the task of Communist parties, which is well worth reading to understand contemporary Soviet policy. Stalin defines the task of Communist parties as (1) the exploitation of contradictions within the capitalist countries, (2) the joining of the working class of leading countries with the national revolutionary movement in backward areas against imperialism, (3) the capturing of the trade union movements, (4) the bringing of the working class into touch with the small peasants, and (5) the supporting of the Soviet Union.

The reviewer believes that the editor of these documents has rendered to those students who do not read Russian a great service in presenting the source material on Soviet foreign policy as it developed in the period between 1925 and 1933, a period which, carefully studied, will lend considerable insight on the trends of Soviet policy more than twenty years later.—William B. Ballis, *University of Washington.*

*Make the UN Effective For Peace.* By John Bauer. (New York: Richard R. Smith. 1952. Pp. 160. $2.50.)

This small book advocates total disarmament and prohibition of aggression to be enforced by a reformed United Nations supplied with inspection staff and military forces. The author seems to think of the execution of his plan as merely administrative, the carrying out of provisions of the treaty which will state policy; but only fragmentary proposals are made concerning matters to be regulated in the treaty. As a result the author never comes to grips with the many real problems inherent in his proposal. There is nothing of value in the rather odd proposals for reconstituting the General Assembly and the Security Council. That the author is aware of difficulties in the way of adoption of his scheme is shown in the chapter on "possible objections." The preface indicates that the author is a "layman," following international relations as an avocation, his field of professional competence being that of economist in the field of public utility regulation. The book has no notes, bibliography or index.—Chesney Hill, *University of Missouri.*

*Unconditional Surrender; The Roots of a World War III.* By F. O. Miksche. (London: Faber & Faber, Ltd. 1952. Pp. 468. Cloth 25s.)

Colonel Miksche, former Czecho-Slovak military attaché in Paris, undertakes in this "desperate appeal to common sense," as he calls it, to demolish a number of historical assumptions without which Allied policy in World Wars I and II cannot be fitted into a rational pattern of behavior. Not only that: Colonel Miksche advances with great cogency a historical argument which, if accepted, is conclusive evidence of the complete irrationality of our previous foreign policy. For this reason reviewers, according to their *Gemütsregungen*, will be tempted to praise or damn the book in terms hardly appropriate for scientific periodicals.

The author gives an excellent résumé of the history of Russian Pan-Slav imperialism, beginning with the supposed Testament of Peter the Great and ending with the prophetic remark of Colonel House in December, 1917: "I thought we had to take into consideration the Russia of fifty years from now rather than the Russia of today. While we might hope it would continue democratic and cease to be aggressive, yet if the contrary happened, Russia would be a menace to Europe and not Germany. I asked him [Balfour] not to look upon Germany as a permanent enemy. If we did this, it would confuse our reasoning and mistakes would be likely to be made." Miksche believes that the net result of World Wars I and II was to remove successively the two Central European bastions against Russian expansionism, Austria-Hungary and Germany. The balkanization of the Danube countries after World War I intensified rather than appeased the national and cultural tensions in the area and created a situation inviting hegemony by a great power—either Germany or Soviet Russia.

Colonel Miksche goes at length into the question of supposed German "aggressiveness." "Germany," said Lord Salisbury in 1880, "is clearly cut out to be our ally." Bismarck echoed the idea: "It would be madness for us to quarrel with England." The story of subsequent events, particularly the gradual deterioration of German-British relations from 1900 to 1914 is, as Colonel Miksche tells it, a story of almost cosmic stupidity on both sides.

In his chapter entitled "Whose Fault Was Hitler?" Colonel Miksche shows how Allied refusal to revise the war-guilt clause in the Versailles Treaty served as a major cause of Hitlerism. "Germany was condemned to disgrace as a criminal nation, and it was that fact that gave the Germans courage in their unequal and disastrous struggle." He agrees that National Socialism was a political disease, requiring a radical operation, but insists that the United States, and to a lesser extent the British, forgetting the long-term problem of Pan-Slav imperialism, set out not to cut out the cancer but to kill the patient.

The author finds only one possible objective for present foreign policy: to pick up the remaining pieces of Europe and put them together as effectively as possible. After a detailed analysis of Soviet and Western military and economic potential, with convincing statistical support, Colonel Miksche concludes that the defense of Europe requires as principal conditions: (1) rehabilitation of Germany and the formation of a German army, (2) the political stabilization of France and (3) the inclusion of Spain in a general plan of European defense. The book concludes with an informative chapter on Communist psychological tactics and the organization of the Cominform, and a futuristic "horror story" of a Soviet invasion of a Western Europe whose members are still arguing about whether German troops should be permitted and Spain accepted as an ally.—Kurt Glaser, *Governmental Affairs Institute.*

*Principles of International Law.* By Hans Kelsen. (New York: Rinehart & Co. 1952. Pp. xvii, 461. $5.00.)

A new departure in the field of international law texts. Eschewing what he calls the "political" approach to international law, the author relies upon juristic analysis, and the subject is treated from the point of view of his pure theory of law. Hence, for example, the law of war is viewed as a problem in "sanctions" for the punishment of illegal action. Stress is also laid on the integration of the law of the United Nations into the general framework of international law.

*Meeting of Minds; A Way to Peace through Mediation.* By Elmore Jackson. (New York: McGraw-Hill Book Co. 1952. Pp. xxii, 200. $3.50.)

Sets forth the results of a group effort to determine whether the United Nations may profit from the experience in labor mediation. Included are chapters on mediation in Sweden and settlement of labor disputes in Great Britain by Carl Christian Schmidt and Sir Frederick W. Leggett, respectively, and an appendix on the handling of industrial disputes in the USSR by Lois Jane Stone. Other chapters deal with the settlement of labor disputes in the United States and the problem of mediation of international disputes.

*The United States in World Affairs, 1951.* By Richard P. Stebbins. (New York: Harper & Brothers. 1952. Pp. xiv, 473. $5.00.)

This annual volume surveys the global development of U. S. problems and policies in 1951, while skillfully filling in the background and providing serious thought for the future in a final chapter entitled "The Revolt of the Underprivileged."

*Major Problems of United States Foreign Policy, 1952–1953.* By the Staff of the International Studies Group of the Brookings Institution. (Washington: The Brookings Institution. 1952. Pp. xiv, 412. Cloth $4.00, paper $2.00.)

Brookings' sixth annual review of U. S. foreign relations and of current problems facing the policy makers. An extended "problem paper" on raw materials and national policy forms a timely third section of the volume.

*The League of Nations Movement in Great Britain, 1914–1919.* By Henry R. Winkler. (New Brunswick: Rutgers University Press. 1952. Pp. xiii, 288. $3.00.)

An analysis of the several proposals for an international organization offered in Britain during the first World War and an assessment of the movement as a whole in that country.

*Atlantic Alliance. NATO's Role in the Free World.* A Report by a Study Group of the Royal Institute of International Affairs. (London and New York: Royal Institute of International Affairs. 1952. Pp. ix, 172. $1.25.)

Summary of the evolution of the North Atlantic Treaty Organization and provocative speculation concerning its future, emphasizing the priority thus far given military preparation and the preference shown for functional cooperation between independent governments rather than federal experiment.

*The Sudan Question.* By Mekki Abbas. (New York: Frederick A. Praeger. 1952. Pp. xix, 201. $4.25.)

A Sudanese—who has been teacher, political leader, editor, special Rhodes scholar, and is now head of a large-scale irrigation project in the Sudan—reviews the history of Anglo-Egyptian controversy over his country since 1883, the increasing importance of the Sudanese viewpoint in this controversy, and the difficulty of finding a settlement acceptable not only to Britain and Egypt but to various factions in the Sudan.

*The Iranian Case, 1946.* By Richard W. Van Wagenen. (New York: Carnegie Endowment for International Peace. 1952. Pp. 119. $0.50.)

An examination of the United Nations' handling of Iran's complaint against the Soviet Union for failure to evacuate its forces at the end of the war. The author concludes that UN action was significantly but not solely responsible for Russia's withdrawal, that valuable procedural precedents were established, and that this open challenge to Russian moves drove one more minor wedge between East and West. The second in Carnegie's "United Nations Action" series.

*The Arab Refugee Problem.* By Joseph B. Schechtman. (New York: Philosophical Library. 1952. Pp. xi, 137. $3.00.)

A brief report on the origins, location and needs of the 750,000 Arab refugees who fled or were driven from Palestine, and on the protracted political negotiations deadlocked by Arab government demands for repatriation and Israel's insistence that resettlement in Arab lands is the only solution.

*Verdict In Korea.* By Robert T. Oliver. (State College, Pa.: Bald Eagle Press. 1952. Pp. 207. $4.00.)

A prolific writer on Korea, and a first-hand sympathetic observer of its people, describes war, politics (domestic and international), and economic problems against a very human Korean background.

*Report on Austria, 1951.* By Office of the U. S. High Commissioner for Austria. (Vienna. 1952. Pp. 135.)

The section on "quadripartite affairs" shows particularly the part that the Soviet element has played in the Allied Council discussions by the government of Austria. Also included is a statistical report on displaced persons and refugees in Austria, a chronology for 1951, and a select bibliography on Austria. Especial interest would seem to attach to the volume since the period covers the election and induction into office of the new president.—J.B.C.

*The Devil's Chemists.* By Josiah E. DuBois, Jr. in Collaboration with Edward Johnson. (Boston: The Beacon Press. 1952. Pp. x, 374. $3.75.)

An account of the ubiquitous role of *I. G. Farbenindustrie* in arming and supporting the Nazi government, somewhat dramatically examined by the unsuccessful prosecutor of the I. G. Farben case during the Nuremberg trials.

*Crime Without Punishment; The Secret Soviet Terror Against America.* By Guenther Reinhardt. (New York: Hermitage House. 1952. Pp. 322. $3.50.)

A German-born former special employee of the FBI and control investigator of the U. S. Counter Intelligence Corps describes a series of murders and other crimes perpetrated by Soviet agents in America and elsewhere.

*I documenti diplomatici italiani.* By Commissione per la pubblicazione dei documenti diplomatici of the Ministero degli affari esteri. (Roma: Libreria dello stato. 1952. Prima serie, vol. 1: pp. xlvi, 603; ottava serie, vol. 12: pp. lviii, 694.)

The Commission, which is editing the great series of Italian diplomatic documents, was set up by ministerial decree of September 20, 1946, and is at present headed by Alessandro Casati, senator of the Republic. The plan is an objective historical one, based upon the historical archives of the Italian Foreign Office. Even with very careful selection, the whole work is envisioned as extending eventually to about 100 volumes, arranged in nine series from the first covering the period Jan. 8, 1861–Sept. 20, 1870, to the ninth, for the period Sept. 4, 1939–Sept. 8, 1943. The above seem to be the first two volumes to appear.—J.B.C.

*Tratados públicos y acuerdos internacionales de Venezuela. Vol. I–III.* 2ª edición. By Ministerio de Relaciones Exteriores. (Caracas. 1950–51.)

Having gone out of print, the first three volumes of the seven volume treaty collection of Venezuela published from 1924 through 1945 have been reprinted, thus making the whole set still available. The arrangement is chronological, and volumes one to three cover the period 1820–1925. Spanish text only is given. Information is given as to treaties that have been denounced or replaced.—J.B.C.

*Brazil; An Interim Assessment.* By J. A. Camacho. (New York: Royal Institute of International Affairs. 1952. Pp. xiii, 116. $2.50.)

The maximum amount of helpful and interesting information—geographic, demographic, economic, historical, and political—which can be compressed in such limited space.

*Traité instituant la Communauté européenne de défense et Documents annexes.* (Paris: La Documentation Française. 1952. Pp. 78. Fr. 350.)

The text of the Treaty setting up the European Defense Community with accompanying documents, published in the unnumbered series *Recueils et monographies.* There had been two earlier prints of the treaty for the Ministry of Foreign Affairs.—J.B.C.

*Readings in World Politics. Vol. I, II, and III.* Revised By Robert A. Goldwin. (Chicago: American Foundation for Political Education. 1952. Pp. 670.)

*Readings in American Foreign Policy. Vol. I, II, and III.* Revised By Robert A. Goldwin. (Chicago: American Foundation for Political Education. 1952. Pp. 753.)

Widely-ranging and often provocative collection of readings, printed without comment, prepared as a basis for adult discussion programs sponsored by the publisher. Because the materials were chosen for their suitability as a stimulus to discussion and can be properly utilized only with concurrent discussion under competent leadership, the volumes are only available to persons participating in the Foundation's programs.

## SELECTED ARTICLES AND DOCUMENTS ON
## INTERNATIONAL LAW AND RELATIONS

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## POLITICAL THEORY, RESEARCH, AND METHODOLOGY

*Geschichtswissenschaft.* By Fritz Wagner. (Freiburg and Munich: Verlag Karl Alber. 1951. Pp. viii, 468. DM 18.)

The present volume is the first in a series entitled "Orbis Academicus," a major publishing enterprise under the general editorship of Fritz Wagner and Richard Brodführer. German science as an institution has suffered a serious break of continuity through the National Socialist interference with academic organization and personnel. The "Orbis Academicus," in each of its volumes, surveys the "history of problems" of one of the sciences, in order to take stock of the present state and to show the development leading up to it. It will be an indispensable means of orientation for the younger generation of German scholars who suffer from "loss of memory" through the interruption; but it also will be a valuable aid to every scholar in search of information on the development and state of problems in his science.

The volume on *Geschichtswissenschaft* is edited by Fritz Wagner, Professor of Modern History at the University of Marburg. It assembles the sources concerning the principles of a "science of history" from antiquity to the present. The editor does not too well define in his otherwise excellent introductory notes what he means by "science of history," but the actual selections as well as the incidental comments show that negatively he wants to narrow his task to "critical" history, thus excluding uncritical, annalistic historiography and the constructions of a philosophy of history. Positively he sees the "critical" trend running toward a penetration of historical materials by the principles of a philosophical anthropology. This delimitation of his task determines the proportions of the work. The selections from classic and medieval authors, from the Renaissance, the Enlightenment and the Romantic periods fill about one half of the text; the other half is devoted to the period from Savigny's historical school to the first World War. In the second part the heaviest accents fall on "Germany's Classic Contribution," with ample selections from Ranke and Dreysen, and on "Historism," with equally generous selections from Dilthey, York-Wartenburg, Troeltsch and Max Weber. Between these two pillars are placed the positivistic and Marxist sources, and a section on the "Struggle for the Concept of Culture" containing, among others, very interesting passages from such American historians as Marsh, Parker and McMaster.

There is not much sense in quarreling with the editor about this or that detail of his preferences. Where the limitations of the enterprise lie the reader will easily discover when he compares the Greek section in Wagner's volume with Toynbee's "Greek Historical Thought." The work as it stands is an important source book on principles of critical history, without a rival. The American reader will find it most useful as a convenient manual, practically complete, of the German contributions to the problem from Ranke to the present. The value of the book is materially enhanced by a voluminous critical bibliography (pp. 391–438) and an equally careful biographical dictionary (pp. 439–463).—ERIC VOEGELIN, *Louisiana State University.*

*That Grand Whig, Milton.* BY GEORGE F. SENSABAUGH. (Stanford: Stanford University Press. 1952. Pp. ix, 222. $4.00.)

John Milton has sometimes been ranked with such contemporaries of his as Thomas Hobbes, James Harrington, John Lilburne, and Sir Robert Filmer. But it has long been suspected that his position as a political theorist rests upon his unquestioned reputation as a literary genius. In fact, the author of the present study accepts the well-known view that the poet's role in the Puritan Rebellion was minor and uninfluential.

"What is not known is how, . . . during . . . the period from the Restoration . . . to . . . Queen Anne, his opinions gained ground and silently won for him many disciples, some of whom stood high in Whig councils." Mr. Sensabaugh continues that "this study therefore purposes to trace the impact of Milton's arguments in the battle of ideas which led to the acceptance of the [Revolutionary] Settlement and the Bill of Rights." He takes the title of his book from the fact that before the Whigs adopted Milton, Tories already called him "that grand Whig, Milton." He feels that he earned the right to the title long before John Locke justified the Glorious Revolution. Well could Milton be cited at the time, since he had blended ideas derived from the English common law, Scripture, the law of nature, and the classical Greek and Roman republics.

The author has exhaustively examined sermons, newspapers, broadsides, and editions of Milton's prose tracts to support his thesis. In that process he has made a significant contribution to our knowledge of an important period in Western political thought.

When the author speaks, however, of Milton's revolutionary program as being connected with the basic pattern of seventeenth-century conflict, there is question as to whether this struggle was quite as simple as Mr. Sensabaugh seems to make it. The Civil War involved more than the questions of "liberty of conscience and the power of Kings." As Professor McIlwain has shown, it was no "clear-cut issue between despotism and freedom. Men on the one side looked to the ancient legal rights endangered by a king who could invade them with impunity; men on the other resisted every tendency to impose on a king checks which had never been imposed before." An awareness of this generally accepted interpretation would have made more meaningful the discussion of the use of Bracton in this period. Furthermore, it is an oversimplification to link without qualification the Roman jurists with Filmer and James I. And it is wrong to claim that the achievement of toleration rested upon the "medieval separation of Church and State."—GUY HOWARD DODGE, *Brown University.*

*Introduction to Political Philosophy.* BY WILLIAM EBENSTEIN. (New York: Rinehart & Co., Inc. 1952. Pp. xi, 330. $4.00.)

Basically a re-issue of the author's earlier work, *Great Political Thinkers,* omitting the selections from original sources and retaining and linking together the introductory essays. The coverage extends from Plato to Freud. The bibliography of some sixty pages is of considerable value.

*Moral Principles of Action.* PLANNED AND EDITED BY RUTH NANDA ANSHEN. (New York: Harper & Brothers. 1952. Pp. xii, 720. $7.50.)

A collection of essays by distinguished and contemporary scholars including M. C. D'Arcy, Werner Jaeger, Robert MacIver, Jacques Maritain, and F. S. C. Northrop on the problems of ethics and value and their relation to contemporary social and political problems. Volume VI in the Science of Culture Series.

*The Two Sovereignties; A Study of the Relationship between Church and State.* BY JOSEPH LECLER. (New York: Philosophical Library. 1952. Pp. x, 186. $3.75.)

In this book Fr. Joseph Lecler, S.J., Professor at the *Institut Catholique* in Paris and editor of *Etudes* deals with the problem of the relationship between church and state from the time of the Romans to the present. The analysis and conclusions are presented from the Roman Catholic point of view and represent a balanced and authoritative statement of that position.

*The Islamic State and Other Political Essays.* BY AJIT KUMAR SEN. (Calcutta: Thacker Spink. 1950. Pp. ii, 141.)

A series of essays on Islamic and Hindu political thought, the government of Pakistan, and the relation of psychology, individualism, religion and science to modern political thought, by a member of the faculty of Calcutta University.

*John Locke; The Second Treatise of Government.* EDITED BY THOMAS P. PEARDON. (New York: The Liberal Arts Press. 1952. Pp. xviii, 139. $0.75.)

A paper-back reprinting of the text of the 6th edition of Locke's *Second Treatise* (1764) with modern spelling, annotations, an introduction and a bibliography.

*Bentham's Handbook of Political Fallacies.* EDITED BY HAROLD A. LARRABEE. (Baltimore: The Johns Hopkins Press. 1952. Pp. xxxii, 269. $4.75.)

A revised and edited edition of Bentham's *The Book of Fallacies,* originally published in London in 1824, with a preface by the editor. Bentham's meanings are preserved, but his English is simplified.

*Theory of Legislation; An Essay on the Dynamics of Public Mind.* BY E. JORDAN. (Chicago: University of Chicago Press. 1952. Pp. 486. $7.00.)

The reprinting with a new preface of a philosophical treatise on legislation which was originally published in 1930 by the Progress Publishing Company, Indianapolis.

*Die Geburtsstunde des souveränen Staates.* BY FRIEDRICH AUGUST FREIHERR VON DER HEYDTE. (Regensburg, Germany: Josef Habbel. 1952. Pp. viii, 475.)

The author examines carefully and thoroughly political and legal theories of 1250–1350 and comes to the conclusion that that was the period in which foundations were laid for the modern sovereign state and modern international law.

*The Structure of Society.* BY MARION J. LEVY, JR. (Princeton: Princeton University Press. 1952. Pp. xvii, 584. $5.00.)

A technical and detailed conceptual scheme and theoretical system for the comparative analysis of societies, termed by the author a "structural-functional analysis."

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HERBERT A. SIMON
*Carnegie Institute of Technology*

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# NEWS AND NOTES

## PROFESSIONAL CONFERENCES

The Southern Political Science Association held its twenty-first annual meeting at the Hermitage Hotel in Nashville, Tennessee, November 6–8, 1952. Approximately 150 political scientists from southern colleges and universities attended the sessions.

Topics of the two opening panels were "Responsible Parties Abroad" and "Problems in State Government." Papers on Latin America, Asia, Germany, and Great Britain were read at the first panel. Federalism, interstate relations, the item veto, and state grants to local government were discussed at the second session. Activities of the first day were capped by the presidential address on "The Supreme Court, States' Rights, and Political Freedom in the South," delivered by Professor George Spicer of the University of Virginia.

Subjects considered during the second day included: "Recent Problems of International Law and Relations," "The Case Approach to Public Administration," "The Conflict of Liberty and Authority," and "Party Organization in the South: The Effects of the Campaigns of 1952." Under the latter topic, papers were presented on Louisiana, South Carolina, Mississippi, Tennessee, Alabama, and North Carolina. At the luncheon on the second day, Senator Estes Kefauver spoke on the subject, "An Analysis of the Election Result." Other topics discussed during the meeting were "Cooperative Research and Education in the South" and "States' Rights."

Newly elected officers of the Association are: Charles B. Robson, University of North Carolina, president; Donald R. Larson, University of Miami, vice-president; Mavis A. Mann, West Virginia University, recording secretary; and Manning J. Dauer, University of Florida, secretary-treasurer and managing editor of the *Journal of Politics*. René de Visme Williamson, of the University of Tennessee, will continue as editor of the *Journal of Politics*.

A Regional Conference on Universities and World Affairs, sponsored by the Carnegie Endowment for International Peace and the Council of World Affairs, was held at Cleveland, Ohio, November 20–21, 1952. Topics on the program included: "The Carnegie Endowment Program in Higher Education," "Interchange of Students and Specialists," "The Impact of World Affairs on Instruction in the Social Sciences," "Undergraduate Courses in International Relations," "The Training of Specialists in International Relations," "Training of Personnel for Technical and Social Assistance," "Extra-Curricular Programs as a Part of Education in International Relations," and "Off-Campus Services in Adult Education."

The University of Southern California, in cooperation with the colleges and universities of the Pacific Area, sponsored the twenty-ninth Institute of World Affairs, held December 14–17, 1952, at the Mission Inn, Riverside, California. Charles E. Martin, professor of international law and political science, University of Washington, served as director of the Institute. The general theme of the meeting was "New Weapons for a New Diplomacy, United States Foreign Policy and Its Implementation." University of Southern California professors who participated included: Tracy E. Strevey, Ross N. Berkes, Carl Q. Christol, J. Eugene Harley, Donald W. Rowland, Richard W. Van Alstyne, Clifford A. L. Rich, Robert W. Oliver, David T. Cattell, John W. Reith, Wilbert L. Hindman, Arthur Carstens, Lawrence G. Guild, Theodore H. E. Chen, Bruce Adkinson, Totton J. Anderson, Russell L. Caldwell, Paul E. Hadley, and Norman R. Fertig. R. B. von Kleinsmid served as chancellor for the Institute.

An Institute on Military Factors in Foreign Policy was held at the Center for Continuation Study at the University of Minnesota, September 29–October 1, 1952. Major discussion topics included "Influence of Science and Technology on Military Factors," "Government Machinery for the Formulation and Administration of Foreign Policy," "Military Factors in Foreign Policy—The Elements of Power," and "Military Factors in Foreign Policy—Regional Considerations." Political scientists participating on the five panels were Lloyd M. Short, Charles H. McLaughlin, Benjamin Lippincott, Werner Levi, Dorothy Dodge and William C. Rogers—all of the University of Minnesota. Professors Royden Dangerfield of the University of Illinois, Dorothy Jacobson of Macalester College, and Heinrich Rommen of St. Thomas College served as visiting participants. Professor William C. Rogers, Director of the Minnesota World Affairs Center, was in charge of the Institute. Copies of the proceedings may be secured from Professor Rogers.

The Third Annual Conference on the Caribbean was held at the University of Florida, December 18–20, 1952, under the sponsorship of the School of Inter-American Studies, University of Florida, in cooperation with the Alcoa Steamship Company. During the three-day conference, five round tables were presented covering economic, social, literary and artistic, political and diplomatic, and peace and security trends in the Caribbean area. The panel of speakers included representatives from various American universities, U. S. government agencies, inter-American organizations, and professors and government officials from Mexico, Panama, Honduras, Colombia, and the British West Indies.

The American University, in cooperation with the American Political Science Association, will hold the Annual Institute for Teachers of Government and Administration at The American University, Washington, D. C., June 8–19, 1953. The Institute is designed to give college and university teaching faculty an opportunity to meet with leaders of official Washington and to participate in discussion of current political processes and developments with operating officials. The process of policy formation and decision making is emphasized. The teachers will be introduced to source materials for instruction and research which may not be available or cited in standard reference sources. The program is developed by a planning committee of political scientists with an understanding both of the needs of university teaching and of the facilities of the Nation's Capital. Inquiries concerning the Institute should be addressed to Lowell H. Hattery, The American University, 1901 F Street, N.W., Washington, D. C.

"Responsibility and Action in Housing Development" was the subject of the Fifth Annual Institute on Problems of Government held at the University of Rhode Island on November 20, 1952. Following the keynote address, delivered by Coleman Woodbury, Norton Professor of Regional Planning at Harvard University, questions of housing, zoning and taxation, and assessment of property were covered in a full day of panel discussions led by specialists in these fields. Although the Institute was open to the public, it was organized particularly for state and town officials, architects, constructors and real estate people. Extensive, new home-building developments and consideration of new zoning ordinances in many Rhode Island towns have made the subject of the Institute one of outstanding current interest in the State.

The Ninth International Congress of Administrative Sciences, convened by the International Institute of Administrative Sciences, will be held in Istanbul, Turkey, September 2–10, 1953. The Institute's Scientific Committee and Committee on Administrative Practices will sponsor round-table discussions on topics such as international administrative jurisdiction, international administrative tribunals, grants-in-aid as techniques of administrative direction, the administration of economic development programs, standards of personal performance in government, organization and management problems, and case studies in the conduct of technical assistance programs. Detailed information may be obtained from Edwin Haefele, secretary of the U. S. Section of the Institute, 1313 East 60th Street, Chicago 37.

The International Union of Local Authorities will hold its Eleventh Congress in Vienna, Austria, June 15–20, 1953. The main themes of the Congress will be: "The Large City and the Small Town: Their Strength and Their Weakness" and "Municipal Finance." Persons interested in attending may obtain details from Herbert Emmerich, chairman, U. S. Committee for International Municipal Co-operation, 1313 East 60th Street, Chicago 37.

A meeting on the teaching of the social sciences was held at Unesco House, Paris, September 16–19, 1952. The meeting grew out of an inquiry conducted by the International Social Science Associations for the main disciplines of the social sciences. A report on the round-table conference held in April, 1952, in Cambridge, England, was published in the June, 1952 issue of this REVIEW. The Unesco House meeting was attended by twenty experts of the different disciplines from eleven countries. Representing political science were the president of IPSA, Professor W. A. Robson; one of its three vice-presidents, Professor Maurice Duverger (University of Bordeaux, France); Professor Taylor Cole (Duke University); Professor T. Cavalcanti, president of the Brazilian Institute of Public Law and Political Science; and M. Jean Meynaud, secretary-general of IPSA. Professor M. Ginsberg (The London School of Economics and Political Science) was elected chairman, and M. Meynaud rapporteur.

For part of the sessions, discussion was carried on in three sub-committees: one on the status of the social sciences in universities (Professor Duverger, chairman); one on the role of the social sciences in general education and as a preparation for particular professions (Professor Robson, chairman); and one on the training and recruitment of professors and methods of teaching (Professor J. N. Hazard, Columbia University, chairman). Plenary sessions discussed the reports submitted by each of the sub-committees and reached a certain number of conclusions aiming at the development and improvement of social science teaching.

UNESCO is to publish in 1953 a volume containing the overall reports set up under the responsibility of the International Associations (especially Professor Robson's report). Pamphlets on the teaching of social sciences within three of the surveyed countries (United States, France, and Great Britain) will also be published. The material gathered during this inquiry and the conclusions reached will be valuable, particularly for countries in which social science teaching has not yet been developed extensively.—J. MEYNAUD.

## ANNUAL MEETING OF AMERICAN COUNCIL OF LEARNED SOCIETIES

The thirty-sixth annual meeting of the American Council of Learned Societies met at Rye, New York, on January 20–23, 1953. All of the twenty-four constituent societies were represented by delegates, one from each society. Prior to this meeting, the annual conference of secretaries of the constituent societies was held; the secretaries also attended the sessions of the Council. Edward H. Litchfield represented the American Political Science Association as executive director and Kenneth Colegrove as delegate. Unlike usual annual meetings of the ACLS, no representatives of the foundations were present.

Cornelius Krusé, professor of philosophy of Wesleyan University, retired as chairman of the ACLS after service of five years in this post. President C. W. de Kiewiet, of the University of Rochester, was elected as his successor. On September 1, 1952, Dr. Charles E. Odegaard, the executive-director, resigned. A veteran staff member, Mortimer Graves, has served as acting executive-director. The Board of Directors is now engaged in selecting a permanent executive-director.

During 1952, the Council received from various sources a total of $981,421.26. Of this amount, it disbursed $644,581.87. The treasurer's report will be published in the *Bulletin: American Council of Learned Societies* for March, 1953. A summary of the wide activities of the ACLS for the year 1952 follows in somewhat abbreviated form.

*Standing Enterprises and Operations.* Of the standing enterprises of the ACLS, no progress can be reported on the *Linguistic Atlas of the United States and Canada,* although the search for funds for its continuation has been maintained. As to the *Dictionary of American Biography,* there is hope that publication of the supplementary volumes may be resumed. The first supplementary volume, published in 1944, brought the *Dictionary* down to December 31, 1935.

The Council's long continued interest in the study of Asia resulted in the production in the middle of 1951 of *A Program for the Improvement of American Understanding of Asian Civilizations,* comprising eight memoranda covering eight points in such a program. This was presented to the Ford Foundation, which organized its own program of fellowships in the amount of $500,000 in 1952; it has just announced a similar program for the current year. For basic implementation of the study of Asian languages, including elementary texts, graded readings, and students' dictionaries, the Ford Foundation has made available to the ACLS the sum of $250,000 over a three-year period beginning in 1952. The operation is now under way. Discussion with the Ford Foundation respecting the later elements of the eight-point program is proceeding, and there is every expectation that some of these will be actualized in the future.

The ACLS Committee on the Language Program continues the work begun under the various ACLS-U. S. Army language programs during World War II. Its most significant operations are: (1) a program producing for the U. S. Department of State elementary textbooks for teaching English to speakers of eleven Asian and East European languages; (2) the new program in Asian language materials for Americans mentioned above; and (3) summer-study aids in linguistics.

The Committee on American Civilization was responsible for the organization of a series of Conferences on "Changes in Systems of Belief in the United States since World War I." The Committee on the History of Religions sponsored Professor Louis Massignon, of the Collège de France, in a series of lectures on Islamic Mysticism. It continued its editing of readers in the world's religious literatures. The first of these, *Buddhism: A Religion of Infinite Compassion,* was published early in 1952. The Committee on the Humanistic Aspects of Science carried on its work of preparing an annotated bibliography. The Committee on Musicology evaluated its Conference on Music in American Life.

The ACLS, in cooperation with the American Council on Education, the National Research Council, and the Social Science Research Council, continued to be represented on the Committee on International Exchange of Persons, the principal function of which is to advise concerning the selection of professors, lecturers, and research scholars for appointments under the Fulbright program. The Joint Committee on the Recovery of Archaeological Remains extended its activities beyond the borders of the United States by advising the Technical Co-operation Administration on establishing archaeological salvage programs in foreign countries under the Point Four Program. The two regional interests of the ACLS, the Southern Humanities Conference and the Pacific Coast Committee for the Humanities, continue to be restricted by lack of funds.

*Fellowships.* During 1952, the following awards were administered by the ACLS: 15 first-year graduate fellowships, 25 advanced graduate fellowships, 18 faculty study fellowships, 19 ACLS scholars' grants, and 45 summer study aids in linguistics. Lists of these awards have appeared in the *ACLS Newsletter.* The need to assist graduate students and faculty members in the fields of the humanities is much greater than the programs of aid available. Indeed, the ACLS, through lack of funds, will apparently not be able to operate any fellowship programs for 1953–1954, except the summer study aids in linguistics.

*Personnel Studies Program.* The ACLS Personnel Studies program has been largely occupied during the past year in completing the collection phase of the National Registration in the Humanities and the Social Sciences. Altogether, some 27,000 schedules were received from 55,800 individuals queried. Altogether, twenty-three different societies, sixteen of them constituents of the ACLS, cooperated in the program. Fifteen separate classification checklists were devised. There were some complaints about the program, the more general ones concerning themselves with the use of humanistic scholars in connection with militaristic programs. The staff adviser attempted a formalized answer to objections of this kind which was embodied in an article entitled "Cast Out the Beam Out of Thine Own Eye," published in the May issue of the *ACLS Newsletter.*

Plans for the analysis of registration materials are going forward. The U. S. Bureau of Labor Statistics expects to produce a general statement with as much detail on separate fields as their numbers and importance in the view of government agencies seem to warrant. Additional analyses will be arranged if necessary by the ACLS, and in some cases cooperating societies are actively concerned. In addition to the basic analytical program, registration materials are being used experimentally for purposes of locating scholars with specific combinations of skills and experience. It is hoped that such use can be regularized and made more widely available.

Beyond these activities, a staff adviser has worked with the National Scientific Register, the National Science Foundation, the National Research Council, the Defense Manpower Administration, the Committee on Relationships with the Federal Government of the American Council on Education, and the United States Employment Service of the U. S. Department of Labor.

*Publications.* The ACLS has continued to explore the means for cheaper methods of manufacture of books in the interest of scholarly publication. The publications of the ACLS during the last two years have been reflections of these experiments in manufacture, and nearly all of the volumes on the list of publications during 1952 have been prepared on an IBM typewriter in the rooms over the garage at the rear of the ACLS offices, and have been brought up to the lithoprinter's camera with a minimum of expense. While the principal purpose of the operation has been to secure dependable figures on costs, the enterprise has carried itself, including amortization of the initial capital outlay for equipment on an actuarial basis, besides providing composition at a low cost. A total of 7,247 pages has been prepared for the camera, of which 3,251 pages were produced in 1952. This service is available at a trifle over cost to the constituent societies.

It is becoming increasingly evident that the problem of scholarly publication is not limited solely to production. The question of distribution also looms large. During the coming months, emphasis will be placed on ways of reaching the potential market for scholarly books. Here, as with production, the ACLS is in a position to experiment with its own pubcations. As a first step, a list of all ACLS publications was included in the summer issue of the *Newsletter*, and subsequent issues have included mention of new books as they have appeared. The formulation of specialized mailing lists and direct approaches to college and university libraries are but two of the ways being considered to bring these publications to the attention of a wider public.

*Area Studies.* ACLS activities in the field which has come to be known, though unsatisfactorily, as "area studies" have been continuous over the past couple of decades and occupied a considerable part in the operations of 1952.

The Committee on Far Eastern Studies met once in Boston, on the occasion of the annual meetings of the American Oriental Society and the Far Eastern Association. Publication of *A List of Published Translations from Chinese into English, French, and German* (Part I, Literature exclusive of Poetry) was finally consummated. The Committee on Near Eastern Studies met twice, both times in New York. Progress was reported on enterprises already under way, such as the Near Eastern Translation Program and *Books and Periodicals in Western Languages Dealing with the Near and Middle East.* Elwell-Sutton's *Guide to Iranian Area Study* came from the press.

The Committee on Slavic Studies met once in New York. The Russian Translation Program and the *Current Digest of the Soviet Press* proceeded throughout the year. The former, with twenty-one volumes published or in press, comes to an end with the year as a result of the termination of the subvention. The *Current Digest,* now in its fourth year, seems assured, through action of the Rockefeller Foundation and the East European Fund, until 1958. The Committee sponsored a Conference on Soviet Economic Growth in New York on May 23–25, and is planning a similar Conference on Russian Intellectual History.

The Committee on South Asian Studies met once in New York. Under joint sponsorship with the Library of Congress, a quarterly accessions list, *Southern Asia: Publications in Western Languages,* appeared.

In the field of Canadian studies, members of the executive staff joined with representatives of the University of Rochester and invited specialists to discuss the question of intellectual relations between the United States and Canada.

For the decade prior to 1948, the ACLS maintained, either by itself or jointly with other Councils, a Committee on Latin American Studies. Recently, the question has been raised as to the advisability of reconstituting an ACLS committee in this field. On May 12, advantage was taken of another meeting of Latin American specialists in New Orleans to hold a conference of specialists from southern institutions. The conference produced an interesting discussion but no very significant proposals as to future operations.

Mortimer Graves suggests that current experience with committees on areas raises a question as to whether we are not beginning to reach a point of diminishing returns from this form of organizational procedure. It is true that for twenty years some of the Council's most spectacular and effective work has been that connected with the committees on underworked area fields. It is equally true that we must question whether continued emphasis on the need for more fellowships, publication opportunities, funds for individual and collective enterprises of research, tools of study, and the acquisition and rendering available of research materials serves a very useful purpose. It is not that these needs are nonexistent; it is that they are not peculiar to the underworked fields of scholarship, but are common to all fields of the humanities.

Other attacks on the same problem should be explored. The most active committee of the ACLS, the Committee on the Language Program, concerns itself with all language and linguistic problems, no matter what the area of their reference. A proposal has recently been made that the ACLS assume an operation of some sort in the field of Oriental philosophy, designed to insinuate concern with Oriental philosophies into philosophy departments.

This is not to argue that we should forsake the areal for the disciplinary or departmental basis in the creation of ACLS committees, but only to point out that there is here an organizational problem which should engage our attention.

*Miscellaneous.* This year, the executive staff made progress in improving communication between the Council and its widening clientele. The *Newsletter,* started some three and a half years ago in an attempt to bring ACLS activities to the attention of a scholarly public beyond those individuals who were intimately associated with the Council or with its committees, is now being published on a quarterly basis. Individuals on fifty campuses have agreed to act as unofficial representatives of the Council and have accepted responsibility for publicizing ACLS activities among their colleagues.

Three members of the staff represent the ACLS on the twelve-member Committee of the Conference Board of Associated Research Councils. Its primary function—the selection of lecturers and advanced research workers for assistance under the Fulbright operation—has been expanded not only by the increasing number of countries being brought into the Fulbright program but also by the introduction into the operation of a much higher degree of planning, especially in the nature of special recruitment, and by the addition of responsibilities in the administration of dollar funds from the Whitney and Ford Foundations for foreign scholars eligible to Fulbright travel grants. The current work load on members is consequently very great and only to be justified if the program is of commensurate value to American scholarship.

*The Humanities in the Next Decade.* The greater part of the time of the Council at the 1953 annual meeting was devoted to the discussion of the humanities in the next decade. Discussion proceeded on the basis of a carefully drafted paper by Mortimer Graves and other members of the staff. In 1951, the Carnegie Corporation made the ACLS a terminal grant for general support, while the Rockefeller Foundation sharply reduced its support for administration, planning and fellowships. The Rockefeller Foundation explained its action as stemming not from any dissatisfaction with the achievements of the Council but rather from a belief that "as the representative of humanistic scholarship in the United States, the Council should not be dependent on any single agency for so large a proportion of its support." In 1952, the Ford Foundation made a grant of $250,000 to the ACLS over a three-year period for the study of Asian languages. This is a promising start with the new and mammoth educational foundation, but it does not fully answer the problem of future support of the Council.

Delegates from the constituent societies agreed that there is an unfortunate tendency to take the humanities for granted. At the same time, even among the constituent societies, there is wide ignorance regarding the activities of the ACLS. As a holding company for the humanities, there is need for better public relations. In the words of Frank Knight, scholarship is a hard product to sell in a democratic society for the reason that the truth seldom sells itself. In spite of the lip service paid to the humanities, there is incessant need for defending the very existence of the study of mankind.

In the field of personnel, the humanities have consistently lost ground to the physical sciences, and even to the social sciences within their own circle. By 1965, the college population will probably be 85 per cent greater than today, unless some other educational process besides the college be devised. There are now approximately 50,000 permanently employed teachers of the humanities and social sciences in American colleges and universities. On the assumption that an increase of students calls for a commensurate increase of teachers, we shall need as many as 40,000 new teachers in 1965, to say nothing of replacements, half of whom should be in the humanities. But at the slow rate that scholars are being drawn into the professional humanities we will not be able to meet the increased demand for teachers without a destructive lowering of standards. Obviously, this problem requires a study of the life-cycle of the humanistic scholar as well as the development of fellowships and other means of promoting research.

Some delegates detected a breach between the humanists and the social scientists; others thought that there was no more than an unhappy lack of cooperation. Even if the latter is true, such lack of cooperation indicates an absence of realism on both sides. If the humanities be the study of man and of man's belief in mankind, then it is difficult to see how either discipline can forego the closest contact with the other. Some humanists claimed that the tax-exempt foundations had lost confidence in the social scientists and that humanists would do well to cash in on this opportunity by giving more attention to current problems. The accuracy of the allegation was disputed, and again cooperation was advised. It was generally agreed that there is no harmful competition between the ACLS and the Social Science Research Council. As planning and promoting agencies for scholarship, both organizations possess the highest utilitarian value.

Most delegates were of the opinion that scholars should bring the humanities to the general public by more effective writing for public consumption. Even among the humanities, which includes literature, the ability to combine scholarship with popular writing is all too rare. There should be no aspersions cast upon scholars who write popular books without loss of their intellectual honesty. If the scholarship is sound, the fact that such publication is financially profitable does not impair its intrinsic value nor it usefulness to the human race.

There was general agreement that the ACLS requires an endowment for administration and planning. To find more than the two or three million dollars necessary for an administrative endowment would be an impossible task. But even in attempting to raise this endowment, the ACLS should not proceed in any way to lessen the responsibility of the foundations for support of the planning and operation of scholarly activities by the Council.—KENNETH COLEGROVE.

## OTHER ACTIVITIES

Formation of a study group to reappraise the foreign economic policy of the United States was jointly announced in November by the Woodrow Wilson Foundation and the National Planning Association. The eight members of the group are: William Y. Elliott, Assistant to the Director for Foreign Activities, Office of Defense Mobilization, and Williams Professor of Government at Harvard University, chairman; Richard M. Bissell, Jr., consultant, Ford Foundation, and formerly Deputy Administrator of ECA; Courtney C. Brown, Assistant to the Chairman of the Board, Standard Oil Company of New Jersey; H. van B. Cleveland, Committee for Economic Development; Theodore Geiger, Chief of Research, National Planning Association; Harry D. Gideonse, President, Brooklyn College; Edward S. Mason, Dean, Littauer School of Public Administration, Harvard University; and Don K. Price, Deputy Chairman, Research and Development Board, Office of the Secretary of Defense.

The study group will examine the basic assumptions about the nature of the world economy on which the United States policy has been based and the specific methods by which we have been attempting to make our policy effective during the postwar period. In their final report, the members will assess the degree of success which our foreign economic policy has had to date, will analyze the main reasons why our policy has not been more successful, and will suggest the modifications, both in concept and in methods, which their findings show to be desirable. The group has agreed on an outline of its work and will ultimately prepare a book-length report of its findings and conclusions.

The National Planning Association has set up a Special Policy Committee on the Organization of the Executive Office of the President to recommend means of improving the President's staff. The Committee includes nineteen members who have long and varied experience with top-management problems gained in business, government, and the study of public administration. Sumner T. Pike, for six years a member of the Atomic Energy Commission and a former member of the Securities and Exchange Commission, has been designated chairman. Political scientist members of the NPA Committee include Louis Brownlow, Luther H. Gulick, and John D. Millett.

A constitutional convention of 99 members will meet at Nashville, Tennessee, in April, 1953, to undertake a limited revision of the state constitution. The convention is authorized to consider the amending clause, the compensation and expenses of legislators, the veto power, the right of suffrage, home rule, and local governmental consolidation. Professor Frank Prescott, of the University of Chattanooga, and Dr. C. C. Sims, of Middle Tennessee State College, are among the delegates. A voluntary group of political scientists and law teachers has been organized to provide studies for the delegates.

Boston University has announced the establishment of an African Research and Studies Program to be inaugurated formally on July 1, 1953. Dr. William O. Brown, now Chief of the African Research Branch in the U. S. Department of State, has been appointed director. This Program, to be established in the Boston University Graduate School, will be closely linked with the social sciences and related fields. Close liaison will be established with individual scholars and research organizations in the United States, Europe and Africa.

The Program will be designed to make a contribution to basic research and studies in the field of African affairs. Emphasis will be placed upon the objectives and fundamental analysis of economic, social, political and technical factors as they relate to social change in contemporary Africa. Consideration will be given to the historical background and the cultural or institutional context of these developments and problems. It is anticipated that such a program will not only serve the interest of scholars, but also will be of use to United States government agencies, and to private individuals and organizations concerned with African questions in the United States, Europe and Africa.

The primary focus of the Program will be on research, with an increasing stress on training in subsequent years. Courses and seminars will be offered in 1953–54 on geographic, cultural, social and political aspects of contemporary Africa. Plans have been made for the development of library resources, and fellowship support and publication requirements for the Program are under consideration.

The Maurice and Laura Falk Foundation has made a grant to Boston University of twelve thousand dollars for the academic year for citizenship education. Professor Edward R. Collier is chairman of the committee in charge of administration of the grant. Extensive plans have been made to afford students an opportunity to gain practical experience with political parties and pressure groups. Observations in the field are followed by conferences at which there is an evaluation of group tactics and programs and their relation to the democratic process.

The Institute of Public Service at Boston University, in cooperation with the United States Department of Agriculture Graduate School, is offering three courses this year for public employees in the New England region: "Position Classification," "Techniques for Effective Personnel Supervision," and "Federal Accounting Procedures." Although these courses are designed primarily for federal personnel in the New England area, state and local employees are invited to enroll. An advisory committee, consisting of federal regional directors and representatives, state department heads, mayors, city managers and students of public administration, has been established to provide general guidance. Each course will be under the supervision of a person concerned with training in one of the federal regional offices and will attempt to elicit maximum exchange of ideas on both theory and practice. Certificates will be given upon completion of courses.

The first steps toward establishment of a program to train students for public service and government research careers have been taken by Western Reserve University. Eighteen civic leaders, including men prominent in federal, state, county and municipal government, are on the advisory committee which is working out details of the program. Ralph J. Besse, vice-president of the Cleveland Electric Illuminating Company, is chairman of the committee. Proposals for the new program include: establishment of the degree of Master of Arts in Public Administration; non-credit studies for executives, creating an executive pool within industry for emergency drafting by the government; and research dealing with all government services, maintained and channeled through a permanent research clearing house.

The Department of Government of Washington Square College, New York University, has received a grant from the Maurice and Laura Falk Foundation of $36,000 for a three-year study of the political content of the newly established integrated course in social science and to evaluate the impact of such a course on student participation in active politics. A comparative study will be made between students enrolled in the social science course and a like number enrolled in the regular departmental introductory course, government in American society.

New York University's Department of Government has established a local Citizenship Clearing House for the Southern District of New York under the Citizenship Clearing House affiliated with New York University's Law Center. The purpose of the local Citizenship Clearing House is to work with the cooperating institutions in the District to the end that students in the several political science departments may be brought into contact with political leaders and encouraged to participate actively in the politics of their respective communities.

For the sixth consecutive year, the Survey Research Center of the University of Michigan will hold its Annual Summer Institute in Survey Research Techniques. This special program is designed to illustrate the theory and application of survey research to such fields as business and human relations, education, psychology and sociology, public affairs, public health, economics, statistics, etc. Again this year a special workshop will be offered in the practical application of survey research methods to these individual fields. The dates for this session are June 22 to July 17 and July 20 to August 14. Further information may be secured from the Survey Research Center, University of Michigan, Ann Arbor, Michigan.

The Society for the Psychological Study of Social Issues, a division of the American Psychological Association, has announced the Industrial Relations Research Award (a $500 U. S. Government bond) to be presented to the individual whose research is judged most meritorious as a scientific contribution to the understanding of labor-management relations. This award has been made possible by a gift to the Society by the Harwood Manufacturing Corporation. Presentation of this year's award will be made at the annual meeting of the American Psychological Association in September, 1953.

Closing date for entries is May 1, 1953. Any research study completed during 1952 or 1953 will be eligible for consideration. Inquiries concerning the award should be addressed to Dr. S. Stansfield Sargent, Secretary, SPSSI, Department of Psychology, Barnard College, Columbia University, New York 27.

At Indiana University, Professors Joseph B. Kingsbury, John E. Stoner, Louis Lambert, and Edwin B. McPheron have been assisting the "Little Hoover Commission" of Indiana in its investigation of state administrative organization during the past year.

Paul H. Appleby, Dean of the Maxwell Graduate School of Citizenship and Public Affairs, Syracuse University, spent the first half of the year in India on an assignment for the Ford Foundation. He resumed his duties at Syracuse with the beginning of the second semester.

Samuel J. Eldersveld, associate professor of political science at the University of Michigan, has been awarded a grant of $5,500 by the Ford Foundation for research in the field of behavioral science.

George C. Guins, lecturer in political science and Slavic languages at the University of California (Berkeley), delivered a paper on "Soviet Law in its Development since 1917 up to 1952" at the International Congress of Jurists in Berlin, July–August, 1952.

Leslie Lipson, University of California (Berkeley), delivered two lectures at the National War College, Washington, D. C., in November, on "The British Commonwealth and Colonies," and "The United Kingdom."

Karl Loewenstein, of Amherst College, participated last August in the meeting of the Executive Committee of the Academy of Comparative Law to prepare the program for the next Congress of Comparative Law (1954). In September, he delivered addresses at the meeting of the International Law Association at Luzern on the subject "Sovereignty and International Cooperation" and at the meeting of the International Political Science Association at The Hague on the subject "The Role of the Political Ideologies."

Roscoe C. Martin, professor of political science at Syracuse University, delivered a series of lectures at the University of Puerto Rico during the latter half of January on the general theme of emergent trends in public administration.

Dayton D. McKean, of the University of Colorado, delivered the Pi Sigma Alpha Lecture at the University of Utah on February 12, 1953. His subject was "Group Dynamics in American Politics." This event is presented annually by the Institute of Government at the University of Utah.

Emery E. Olson, Dean of the School of Public Administration, University of Southern California, returned to Turkey during the summer of 1952 to act as chairman of a United Nations staff of experts participating with a Turkish academic and governmental group in the planning of an Institute of Public Administration at the University of Ankara. Dean Olson was a member of the Barker Economic Mission to Turkey for the International Bank in 1950. Five professors from the University of Ankara are now being trained in public administration over an eighteen-months period as a technical assistance project under the Mutual Security Administration.

Herbert A. Simon, professor of administration in the Graduate School of Industrial Administration, Carnegie Institute of Technology, is directing a project investigating human behavior in business and other organizations. The study is being financed by a grant of $30,000 from the Ford Foundation. Professor Simon is also one of 45 scholars who received individual grants of $5,500 from the Ford Foundation for research in fields related to human behavior.

### NOTES ON MILITARY VOTING IN 1952

On March 28, 1952, President Harry S. Truman transmitted to the Congress the report made to him by the Special Committee on Service Voting of the American Political Science Association.[1] A presidential message accompanied the report, endorsing the work of the Committee and requesting the passage of legislation recommended in the document.

Finding that twenty-four of the states make it unduly difficult, and in some instances impossible, for absent members of the armed forces to vote, the Special Committee urged the enactment of a temporary national law, applicable to the 1952 election only, which would provide a federal ballot for servicemen whose states did not afford them an opportunity to vote on reasonable terms. The defects found in state voting laws were the following: failure to make provision for absent voting, denial of the suffrage to members of the regular military establishment, requirement of personal registration, refusal to accept the standard post-card form furnished by the Department of Defense as an application for an absentee ballot, and tardy dispatch of absentee ballots, making it difficult for military personnel to receive and return their ballots in time to have them counted. The expectation of the Special Committee that the states themselves would not remedy these defects before the 1952 election was borne out by events.

Senators Green (R. I.), Humphrey (Minn.), and Lehman (N. Y.) sponsored a bill which followed closely the federal law proposed by the Special Committee on Service Voting. This measure (S. 3061) passed the Senate without a record vote and without serious manifestation of opposition to its basic features on June 20. A companion measure (H.R. 7571), sponsored by Representative McCormack (Mass.), however, died in committee, caught in the legislative log jam at the end of the session.

No more fortunate was the recommendation of the Special Committee that existing federal law affirming the right of absent servicemen to vote without registering and without payment of poll tax, applicable "in time of war," be amended so that its guarantees would apply in time of peace as well. Doubt as to the constitutionality of such guarantees was offered as the reason for rejecting this recommendation by a House committee, which noted the "tendency to be impatient with constitutional restrictions whenever they stand in the way of legislation that is desirable."[2]

The net result of the report made by the Special Committee on Service Voting in terms of legislation to date has not been encouraging. It is likely, however, that many states will amend faulty voting laws in 1953. The Drafting Committee of the Council of State Governments has included in its program of "Suggested State Legislation for 1953" measures to eliminate the barriers to service voting. If such measures are enacted, the work of the Association's Special Committee will not have been fruitless.

Reports on the military vote in 1952 will be fragmentary. In no more than a dozen states will there be any computation of the size of the service vote. Information furnished to the Department of Defense by the secretaries of state of six states indicates that the percentage of servicemen of voting age who voted in 1952 falls considerably short of the comparable percentage in 1944.

These figures are somewhat surprising in view of the large turnout at the polls in the recent presidential election. Approximately 62 per cent of the total population of voting age voted in 1952, whereas the 1944 vote represented 56 per cent of the population of voting age. The decline in the service vote, given an opposite trend in the civilian vote, poses an interesting problem for specialists in voting behavior.

A poll of the student body at the United States Naval Academy disclosed that 67 per

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[1] This report, entitled *Voting in the Armed Forces*, was published in full as House Document No. 407, 82nd Cong., 2nd sess., and in summary in this REVIEW, Vol. 46, pp. 512–23 (June, 1952).

[2] House Report No. 2041 on H.J. Res. 477, Emergency Powers Continuation Act (June 6, 1952).

| State | Percentage of Potential Military Voters Who Actually Voted 1944 | 1952 |
|---|---|---|
| Maryland | 24.8 | 21.1 |
| New Jersey | 51.3 | 28.6 |
| New York | 42.2 | 30.2 |
| Rhode Island | 44.8 | 20.0 |
| Tennessee | 15.1 | 10.4 |
| Virginia | 21.5 | 12.1 |

cent of the midshipmen of voting age cast ballots in 1952. When allowance is made for those from states which absolutely barred them from voting (New Mexico, South Carolina, and Texas), the figure becomes 73 per cent of the men of voting age resident in the forty-five states which granted suffrage to absent military personnel. In great part, presumably, educational differences would explain the differential between the high turnout on the part of midshipmen and the low turnout among service personnel generally.

Meeting residence requirements for voting is a major problem for members of the armed services. During 1952, California contributed something toward the solution of this problem when the Attorney-General of the State held that residence on a federal military reservation within California for the period prescribed by statute satisfies the State's residence requirement for voting. This ruling, subsequently upheld by an inferior court,[3] has yet to be passed on by the State's highest tribunal. California appears to be the only state which interprets the residence requirement for voting so leniently, but its ruling is worthy of imitation elsewhere.—William B. Prendergast.

## RESEARCH ON THE PRESIDENTIAL NOMINATING PROCESS IN 1952

The Association's Cooperative Research Project on Convention Delegations is preparing a report on state and local aspects of the presidential nominating process in 1952. The report is being organized on a state-by-state basis, with sections for as many states as possible.

In November, 1952, the Association received a second grant of $24,830 for the project from the donors of the original grant of $30,000. Renewed arrangements were then agreed upon with the Brookings Institution under which Paul T. David is continuing as project director. The officers of the Association also concluded that a special advisory committee should be appointed, which will have two functions: (1) to advise the project director and the Executive Director of the Association on the continuation and the completion of the work; and (2) to advise the officers of the Association, when the time comes, as to the merits of the final report of the project and its readiness for publication under the sponsorship of the Association.

The membership of the Advisory Committee is as follows: Arthur N. Holcombe (chairman), Louis Brownlow, Richard S. Childs, Alexander Heard, Peter H. Odegard, Louise Overacker, and James K. Pollock.

The Committee held its first meeting on December 2, 1952, and will probably meet again early in April, 1953, at which time it will consider a preliminary draft of portions of the report. The report is planned for completion in manuscript by June, 1953.

The staff at work in the Washington office of the project, in addition to Dr. David, has included Esther Cole Franklin, Ralph M. Goldman, and Robert V. L. Wright, Jr. Professor Malcolm Moos of Johns Hopkins University has also joined the staff on a part-time basis to assist in editing the draft report.

The existing work is based on field materials secured as indicated by the notes concerning the project that appeared in the June and September, 1952, issues of this REVIEW. When further project financing became assured, a special effort was made to secure additional field work in the states where only one delegation had been studied. These efforts appear to have been successful in at least 11 states: Maine, New Hampshire, Ohio, Pennsylvania, Kentucky, Louisiana, South Dakota, Nebraska, Montana, Colorado, and Arizona. In addition, in two of the states for which no field reports had been received, new arrangements have been made for consolidated state studies, as follows: New Jersey (Harry R. Davis, on leave from Beloit College); Oklahoma (Cortez A. M. Ewing, University of Oklahoma).

In the earlier stages of the project, complete coverage through field work was not considered a feasible objective, and it remains unlikely that it will be attained. The final project report will include a consolidated roster of the more than 300 persons who have been active as project participants.—Paul T. David.

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[3] *Arapajolu v. McMenamin*, District Court of Appeal, 1st App. Dist., Division Two (unreported).

# APPOINTMENTS AND STAFF CHANGES

Charles Aikin, University of California (Berkeley), spent the summer of 1952 in Germany, where he undertook a study of the German-American Exchange of Persons Program under a grant from the Institute of Social Sciences.

Benjamin Baker, formerly of Hofstra College, has been appointed lecturer at Rutgers University. He will specialize in municipal and public administration.

John W. Baker, formerly at the University of California (Berkeley), has been appointed assistant professor of political science at the University of Florida for 1952–53.

Stephen K. Bailey, associate professor of political science at Wesleyan University, was elected Mayor of Middletown, Connecticut, on October 6, 1952.

Russell Barrett, who recently received his degree from the University of Melbourne, has been appointed acting instructor in political science for 1952–53 at the University of California (Berkeley).

Bohus Benes, former Consul General of Czechoslovakia at San Francisco, was a visiting lecturer at the Ohio State University during the autumn quarter, giving courses in Soviet affairs and international organization.

George J. Bereday, recently a graduate student at Harvard University, is teaching comparative modern government at Boston College. He also serves as a consultant to the Harvard Russian Center.

Thomas C. Blaisdell, Jr., director of the Bureau of International Relations, University of California (Berkeley), was on leave during November to serve with the United Nations Technical Assistance Board in reviewing technical assistance programs of specialized agencies.

Joan Bondurant, who was awarded the Ph.D. degree in September, 1952, at the University of California (Berkeley), is undertaking study and research in India under a Social Science Research Council fellowship.

Daniel M. Braum has been appointed visiting professor of political science at the University of Michigan for a two-year period, beginning December 15, 1952. He has been assigned to the Institute of Public Administration, University of the Philippines, where he will serve as an in-service training consultant and teach courses in office management and related subjects. Professor Braum was formerly Chief, Training Branch, General Services Administration, Washington, D. C.

Burton R. Brazil is serving as instructor in political science at Stanford University during the academic year 1952–53.

Arthur W. Bromage, of the University of Michigan, is on sabbatical leave during the spring semester and is making a comparative field study of Irish and English municipal government. He has received a grant from the Faculty Research Fund at the University of Michigan in support of this project.

Edward H. Buehrig, associate professor in the department of government at Indiana University, has returned from his leave of absence to work on a research project with the Brookings Institution in Washington, D. C. Professor Buehrig's leave extended through the academic year 1951–52 and the first semester of 1952–53.

Eugene Burdick has recently been appointed assistant to the new chancellor at the University of California (Berkeley). He will continue to offer course work in political theory.

James L. Burke, S.J., chairman of the department of government at Boston College since 1938, has been appointed Dean of the Boston College Graduate School. He is also serving as a member of the national executive committee of the Jesuit Educational Association.

Ardath W. Burks, assistant professor at Rutgers University, is doing research in Japan under a Social Science Research Council award.

Eleanor Bushnell has accepted a teaching appointment at San Francisco State College.

Leo Cagan began a year's leave of absence from San Francisco State College on February 1, 1953. During his leave he will serve as a public administration specialist with the United Nations Secretariat in New York City.

George Catlin, who taught in the 1952 summer session at the University of California (Berkeley), also spent the fall term as visiting professor of political science at that institution.

Hugh Clokie has been reappointed lecturer in political science, University of California (Berkeley), to offer work in the dependent areas and comparative government fields.

Francis W. Coker, professor emeritus at Yale University, taught at the University of North Carolina during the winter quarter. This is the fourth successive year that Professor Coker has taught for one quarter at North Carolina.

Morris W. H. Collins, Jr., assistant professor of political science at the University of Georgia, was appointed director of the Bureau of Public Administration at that institution on October 1, 1952. Mr. Collins has been acting director since the reactivation of the Bureau on July 1, 1951.

Thomas Albert Corbett, O.P., has been appointed assistant professor of politics at the Catholic University of America.

Robert F. Cushman has been advanced to an assistant professorship at the Ohio State University.

Robert T. Daland has been promoted to the rank of assistant professor of political science at the University of Alabama.

James Davies, who received his degree from the University of California (Berkeley) in January, 1952, has been reappointed to a postdoctoral fellowship at the Survey Research Center, University of Michigan.

Guenter Decker, who holds a research assistantship in international studies at the Goethe University in Frankfurt and is in this country under State Department auspices during the current academic year, was a visiting lecturer at the Ohio State University for the autumn quarter, giving a course in international law.

David R. Deener, formerly of Duke University and the University of Pittsburgh, has been appointed to an associate professorship of political science at Tulane University.

Conley H. Dillon has received an extension of his leave from Marshall College to continue in his position in the Office of Price Stabilization, Washington, D. C., during 1952–53.

Christopher Dyer-Bennet has been appointed associate in political science at the University of California (Berkeley) for the 1952–53 academic year.

Russell H. Fifield will be on sabbatical leave from the University of Michigan during the academic year 1953–54. He will spend the year studying the foreign policy of the Philippines and other nations in Southeast Asia. The project will be financed by a Fulbright grant and assistance from the University of Michigan Faculty Research Fund.

Ossip K. Flechtheim, who was on leave from Colby College during 1951–52, has resigned his position at Colby to accept the offer of a chair in comparative government and politics at the Deutsche Hochschule für Politik in Berlin-Schoeneberg. Dr. Flechtheim has been acting as a consultant to the German Federal Minister of the Interior and has also been appointed contributing editor of the new monthly publication *Politische Literatur*.

Julian Friedman has been reappointed lecturer in political science at the University of California (Berkeley) for the 1952–53 year. Mr. Friedman is offering a course on political institutions in Africa.

Emanuel R. Fuchs has been appointed staff economist to the United States Department of Interior's Missouri Basin Field Committee, which coordinates the programs and activities of Interior agencies engaged in the Missouri Basin development program.

Hubert S. Gibbs was promoted to an assistant professorship in political science at Boston University in July, 1952.

Gilbert S. Gilchrist has been awarded a General Education Board fellowship and is on leave of absence from the University of the South for a year's study at the Johns Hopkins University.

Heinz Guradze's appointment as guest professor in international organization and political theory at the University of Cologne has been extended through the winter of 1952–53.

David Vance Guthrie, Jr., formerly an instructor at the University of North Carolina, has joined the department of political science at the University of the South.

Andrew Gyorgy, formerly of Louisiana State University, is a visiting lecturer in international relations at Boston University.

Luther G. Hagard, Jr., recently a graduate student at the University of Minnesota, has been appointed assistant professor of political science at The Citadel.

Lashley G. Harvey has resumed his duties as chairman of the department of government at Boston University after a year's leave of absence as a Fulbright scholar at the London School of Economics and Political Science. While in London, he gave a series of ten lectures on American government and ten lectures on the administrative process. Professor Robert P. Benedict was the acting chairman of the department during the absence of Professor Harvey.

William C. Havard, of Northwestern State College, Natchitoches, Louisiana, is teaching at Louisiana State University during the absence of Professor Kimbrough Owen, on leave.

Robert S. Hayton, candidate for the Ph.D. degree at the University of California (Berkeley), is spending a year of study in South America on a Doherty fellowship. He is also the recipient of a Pan American World Airways Travel fellowship, through the Institute of International Education, for study in Chile.

Francis Heller, who has been on leave with the U. S. Army, has resumed his teaching duties as associate professor of political science at the University of Kansas.

Paul Heppe has returned to his position as assistant professor in the department of history and government at Kansas State College. Mr. Heppe spent the first semester in Canada, where he was engaged in research on Canadian political parties.

Karel Hulicka, who received the Ph.D. degree from the University of California (Berkeley) in January, 1952, has been appointed acting instructor in political science for 1952–53.

Dunning Idle, formerly a Foreign Service reserve officer, has joined the staff at the University of Miami as visiting professor of political science.

Harry V. Jaffa, assistant professor of political science at the Ohio State University, is on leave during the current academic year. He holds a Ford Foundation grant.

Henry L. Janssen has been appointed lecturer in political science at the University of California, Santa Barbara Campus, for 1952–53.

Claudius O. Johnson, professor and former chairman of the department of history and political science at Washington State College, has been appointed a Fulbright lecturer at the University of Sydney and Melbourne for the coming academic year. He has been granted leave of absence from February 1, 1953 to February 1, 1954.

Joseph Kaiser, of the University of Tübingen, Germany, will be a visiting lecturer at the Ohio State University during the spring and summer quarters, giving courses in Western European political institutions and in international law.

Hugh E. Kelso has returned to the staff of the political science department at the State University of Iowa after being on leave of absence for 17 months while serving with the Armed Forces.

Lane W. Lancaster is on leave of absence from the University of Nebraska during the second semester of the present academic year.

Robert S. Lancaster resumed his duties at the University of the South last September after a year's leave of absence, which he spent at the University of Michigan.

Carl Leiden, of Marshall College, is on leave to teach at the University of Peshawar, Pakistan, on a Fulbright appointment.

George Lenczowski, visiting associate professor at the University of California (Berkeley) in the spring semester, 1952, is spending the 1952–53 academic year in the Middle East on a Ford Foundation grant.

Edward G. Lewis, of the University of Illinois, is spending the year in France on a Fulbright fellowship. He is dividing his time between research and lecturing in French universities.

Benjamin E. Lippincott, of the University of Minnesota, has accepted an appointment as visiting professor of political science at Stanford University for the winter and spring quarters of 1953. He is offering courses in political theory while Professor Arnaud B. Leavelle is in England on a Fulbright fellowship.

Al Loeb, recently junior research political scientist at the University of California (Berkeley), has accepted appointment as staff technician with the State Personnel Board of California, Sacramento.

Harvey C. Mansfield, of the Ohio State University, served as a consultant to the U. S. Bureau of the Budget during the fall, in connection with the preparation of the final report of the President's Advisory Committee on Management Improvement.

Yale C. Maxon has been appointed to the faculty of the San Francisco State College for the current academic year.

Lee C. McDonald, who received his doctorate from Harvard University last June, is serving as a visiting assistant professor in the department of government at Pomona College during the sabbatical leave of Professor John A. Vieg.

Theodore McNelly, who recently received his doctorate in public law and government at Columbia University, has been appointed to an instructorship at Washington University, St. Louis, to teach courses in Far Eastern politics and history.

Marvin Meade returned to his position of research analyst in the Governmental Research Center, University of Kansas, on January 1. He has been on leave to serve as staff analyst on the President's Missouri River Basin Survey Commission in Lincoln, Nebraska.

Ernest E. Means, who recently completed his residence for the doctorate at the University of Wisconsin, has been appointed assistant professor of political science at The Citadel.

James H. Meisel, of the University of Michigan, will be on sabbatical leave during the academic year 1953–54. He plans to be in Europe collecting data for a study of the political philosophy of Pareto.

William D. Metz, assistant professor of history and political science at the University of Rhode Island, has been named editor of the *New England Social Studies Bulletin*, a quarterly publication of the New England Association of Social Studies Teachers.

Edward W. Mill resigned his position as lecturer in political science at the University of California (Berkeley) to complete work for the Ph.D. degree at Princeton University.

Boris Mirkine-Guetzévitch has resumed his duties as Dean of the Faculty of Law and Political Science of the French University of New York after a six months' stay in Paris, where he offered his annual course at the Institute of Advanced International Studies, University of Paris, and served as a director in the Institute of Comparative Law.

Emmet V. Mittlebeeler has accepted a part-time lectureship on the faculty of the University of Louisville. He will continue to maintain an office for the practice of law in Louisville.

Jack H. Mower has been awarded a President's fellowship from Brown University to continue research on modern British colonial policy in tropical Africa. He is spending the year 1952–53 in Nairobi, Kenya.

E. E. Naylor, Special Assistant to the Director of Finance, Department of the Air Force, has been appointed lecturer in the department of political science and public administration at the American University and will offer courses in public budgeting.

Louis Nemzer, associate professor of political science at the Ohio State University, is on leave for 1952–53, on a research grant at the Russian Research Center, Harvard University.

William Newman is on leave from Boston University during the present year as a Fulbright lecturer at the University of Rennes.

Edmundo O'Gorman, member of the Faculty of Philosophy and Letters of the National University of Mexico, is a visiting professor in the Woodrow Wilson School of Foreign Affairs, University of Virginia.

F. Warren O'Reilly, a recent Ph.D. in international relations from the London School of Economics and Political Science, has been appointed assistant professor at Marshall College during the absence of Professor Leiden, on leave.

George Outland, professor of government at San Francisco College, has resumed his regular duties after a year's leave of absence as a Ford Foundation fellow, studying the social sciences in general education at various institutions throughout the country.

Kimbrough Owen, of Louisiana State University, has been granted an extension of his leave of absence in order to continue as director of research for the Public Affairs Research Council of Louisiana, a privately financed organization for research in state and local government.

Wilfrid Parsons, S.J., has been designated professor emeritus of politics at the Catholic University of America.

Merritt B. Pound, head of the political science department at the University of Georgia, was on active duty with the U. S. Air Force during August and September, 1952, as director of the inventory of reserve personnel for 53 Northeastern Georgia counties centering in Atlanta. Professor Pound is a lieutenant colonel in the Air Force Reserve.

Francis J. Powers, C. S.U., has been named acting head of the department of politics at the Catholic University of America.

Mohammad Tawfik Ramzi, of Fouad University, Cairo, Egypt, has been appointed lecturer in political science at the University of Michigan for the academic year 1952–53. Professor Ramzi holds a Fulbright fellowship and has been awarded a grant by the Ford Foundation.

Ellsworth L. Raymond has been promoted to assistant professor of government at New York University.

Clifford A. L. Rich is serving as visiting instructor of political science at the University of Southern California for the academic year 1952–53.

Arnold A. Rogow, formerly of Princeton University, has been appointed an instructor at the State University of Iowa.

Heinrich Rommen, professor of political science at St. Thomas College, has been appointed visiting professor of political science at the University of Minnesota for the winter and spring quarters of 1953. He will give Professor Lippincott's graduate seminar in readings in the classics of politics, while the latter is serving as a visiting professor at Stanford University.

Russell M. Ross, University of Iowa, was promoted to associate professor of political science July 1, 1952. During the summer quarter, Dr. Ross served as a visiting professor of political science at San Jose State College.

Raymond K. Rossiter has been granted a seven months' leave by the Far East Section, Division of Program Evaluation, International Broadcasting Service of the U. S. Department of State, to engage in study and research at Columbia University.

Joseph S. Roucek, of the University of Bridgeport, served as visiting professor at the University of Puerto Rico last summer.

Robert Scalapino is on leave from the University of California (Berkeley) for 1952–53, under grants from the Social Science Research Council and the Carnegie Endowment, to complete a study on the Japanese Labor Movement and to undertake research on Sun Yat-Senism and its impact on China.

Richard F. Scott has been appointed lecturer in political science, University of California (Berkeley), for 1952–53 to offer work in the international law field.

John P. Senning became professor emeritus of political science in June, 1952, after thirty-six years of service on the faculty of the University of Nebraska.

Olive Hall Shadgett has been appointed temporary instructor in political science and research assistant in the Bureau of Public Administration at the University of Georgia.

Robert W. Siebenschuh, associate professor of political science at Roosevelt College, has been engaged by the Committee on City Expenditures of Chicago to assist in the current management survey.

Lewis B. Sims has returned to his position as staff adviser, Division of Engineering Resources, U. S. Public Health Service, after spending the first semester of 1952–53 as visiting professor of political science at the University of California, Los Angeles.

J. Malcolm Smith has resigned his instructorship at Columbia University to accept a position with the Foreign Policy Association in Los Angeles.

Henry R. Spencer, professor emeritus at the Ohio State University, is serving his second year as visiting professor of political science at Tulane University.

David Spitz has been advanced to an assistant professorship at the Ohio State University.

Harold Sprout, of the department of politics, Princeton University, has been appointed to the newly established Henry Grier Bryant Professorship of Geography and International Relations at Princeton.

T. Noel Stern resumed his duties at Boston

University in January after a year as a Fulbright lecturer at the Universities of Rennes and Strasbourg.

Donald S. Strong has been promoted to a full professorship in political science at the University of Alabama.

Richard N. Swift, on leave from New York University as visiting lecturer on international affairs at Harvard University in 1951–52, has resumed his regular duties as assistant professor of government.

Carl F. Taeusch, professor of public administration, St. Louis University, is on leave of absence during the current year to lecture under a Fulbright fellowship at the University of Ankara, Turkey.

Chun-lin Tan, recent doctoral recipient at Columbia, has been appointed lecturer in international relations at Rutgers University in the absence of Ardath W. Burks, on leave.

William Lonsdale Tayler, chairman of the department of political science at Dickinson College, has returned to his post after two years' leave of absence during which he served as Dean of the Overseas Branches of American International College (U. S. Air Force colleges in Saudi Arabia, the Azores and Bermuda).

Clarence E. Thurber, formerly with the International Studies Group of the Brookings Institution, has joined the staff of the Division of Overseas Activities of the Ford Foundation in Pasadena, California.

Glenn Tinder, who received his degree in January, 1952, from the University of California (Berkeley), has been appointed an instructor at Amherst College.

Richard B. Trimble, Colonel, U. S. Army Retired, has rejoined the staff of the political science department at the University of Georgia as instructor.

Robert Tucker, assistant professor of government at San Francisco State College, has been called to active duty as a lieutenant in the U. S. Navy, and is assigned to the Naval War College as a specialist in international law.

Frank Untermeyer was on leave of absence from Roosevelt College during the fall semester, 1952, to engage in research on British colonialism and African federation. Professor Untermeyer traveled through much of Kenya, Nyasaland, Tanganyika, and the Rhodesias.

John A. Vieg, chairman of the department of government at Pomona College, is on leave of absence during 1952–53. He has a Fulbright fellowship for teaching and research at the University of Oslo, and is lecturing on American institutions and conducting research on the government of Norway and other Scandinavian countries. Professor Vieg has also accepted an invitation to deliver a series of lectures and serve as a consultant in public administration at the College of Europe, Bruges, Belgium, during the spring.

Dwight Waldo, University of California (Berkeley), is on sabbatical leave for the year, which he is spending in Washington, D. C., on a Ford Foundation grant.

Harvey Walker returned to his post at the Ohio State University, in January, 1953, after a 15 months' leave to participate in the work of the Institute of Public Administration at Rio de Janeiro.

Jacob Walkin, recently research assistant, Institute of Slavic Studies, University of California (Berkeley), has been appointed to the research staff of the Division of Research for the USSR, State Department.

Richard C. Welty, recently a graduate student at the University of Colorado, has been appointed assistant professor of political science at Hamline University.

Holt Bradford Westerfield has been appointed instructor in the department of government at Harvard University.

John Albert White, a specialist in Far Eastern relations and Russian history, has joined the Claremont Graduate School faculty as visiting associate professor of history and international relations.

R. G. Whitesel, recalled to active military duty in 1951, has resumed his associate professorship of political science at the State University of Iowa. During his absence, Major Whitesel served in the Office of Chief of Staff, Fifth Army Headquarters, and overseas as Civil and Foreign Affairs Officer, United Nations Command Headquarters, Far East.

Charlotte Williams of Middle Tennessee State College, taught at Johns Hopkins University during the 1952 summer session.

John R. Williams resumed his duties in September as assistant professor of political science at West Virginia University after spending a year in England.

Francis G. Wilson, professor of political science at the University of Illinois, was a visiting lecturer at Emory University during the winter quarter, 1953.

Robert R. Wilson has returned to his position as professor of political science at Duke University after a year spent in Turkey as a Fulbright professor at the University of Istanbul.

H. J. Wood, who was on leave of absence during the last academic year while he served as a Fulbright lecturer in the Philippines, has assumed the chairmanship of the department of history and political science at Washington State College.

Harold Zink is on leave from the Ohio State University to be visiting professor at Duke University during the second semester of the current academic year.

## IN MEMORIAM

Charles E. Merriam was born in Hopkinton, Iowa, November 15, 1874, and died in Rockville, Maryland, January 8, 1953. He was a charter member of the American Political Science Association, served on many of its committees over a period of forty years, and was President of the Association in 1925. He was a member of the faculty of the University of Chicago from 1900 until his retirement in 1940, and was noted as a stimulating teacher and a helpful adviser both to his students and his younger colleagues.

His academic interests shifted from time to time in well-marked periods, in accordance with his off-campus activities. He devoted himself initially to municipal government and reform, the principal business on the agenda of the first decade of this century. He was elected to the City Council of Chicago in 1909, and was a candidate for Mayor in 1911, losing by a narrow margin to Carter Harrison. He was reelected to the Council in 1913, but was unsuccessful in resuming his political career after returning from military service in World War I.

His interest now turned to political parties, stimulated by his own experience, his association with Theodore Roosevelt in the Bull Moose campaign of 1912, and the inescapable fascination that he found in politics. This new center of attention resulted in his book, *The American Party System*, and in studies of elections, political leadership, and citizenship. Dissatisfied with the relatively narrow content of political science, he began a private reading course in economics, sociology, and anthropology, and then devoted his inventive mind to the ways and means of cross-fertilizing political science with these sister disciplines. He took an active part in the Conferences on the Science of Politics, and was the principal founder and the first President of the Social Science Research Council. This was one of his major organizational achievements.

His underlying academic interest was in the history of political ideas and the development of political theory in the context of contemporary life. His first contribution was his doctoral dissertation at Columbia, *The History of Sovereignty Since Rousseau*; his last two, *The New Democracy and the New Despotism* and *Systematic Politics*. The final decade of his teaching was devoted to the defense of the democratic way of life, and to the criticism of authoritarian institutions.

Charles Merriam served on many public and quasi-public bodies, among others the Commission of Inquiry on Public Service Personnel, the Commission on Social Trends, the National Resources Planning Board, the President's Committee on Administrative Management, and the Loyalty Review Board.

He was influential in the formation of Public Administration Clearing House and in the establishment in Chicago of the national headquarters of about fifteen organizations of local and state public service officials, known nationally and internationally as "1313." Merriam served on many of their committees, and as a member of the Board of the Spelman Fund assisted in their early financing.

He was always interested in the improvement of governmental machinery. In succession he spoke for the short ballot and the safeguarding of election machinery, the initiative and referendum, the city manager plan, charter revision in Chicago and the rewriting of the Illinois State constitution, city planning and the conservation of national resources through state and federal planning, and the reorganization of the federal administrative system.

Charles Merriam had an uncanny perception of emerging trends and great skill in putting young men to work in promising fields. His eye was always on the horizon, and he was always busy searching for ways and means of ferrying mankind to a happier destination. His host of friends and students will remember him as a man who enlivened any gathering of which he was a member. He was friendly, genial, fond of company and conversation, and full of wisdom. He had an extraordinary capacity for commanding the respect, the loyalty, and the affection of those who knew him. Perhaps no political scientist of his generation exerted a greater influence, not only within his own field but upon the constructive development of the social sciences and their contribution to public affairs.—LEONARD D. WHITE.

Julius Turner, associate professor of political science at Allegheny College, died December 24, 1952, at the age of thirty. Already he had won recognition as one of the most promising young scholars in the field of American politics. His published work reflected skill and ingenuity in analysis and both imagination and respect for data in interpretation. At the time of his death he had under way, with the aid of a Social Science Research Council fellowship, an analysis of congressional elections with a view toward a more complete understanding of the extent and limits of party competition. Fragments of this work, some of which were left in sufficiently finished form for publication, indicate that it would have compelled considerable modification of conventional theories of the party system.

Professor Turner had received his Ph.D. degree in 1950 from the Johns Hopkins University, where he also served as a junior instructor. His doctoral thesis, initiated under the direction of V. O. Key, Jr., was published under the title, *Party and Constituency: Pressures on Congress*. He taught at Boston University before moving to Allegheny. He had achieved already an unusual mastery of the art of teaching, and had gone far in establishing mutually valuable friendships in his profession. His untimely death is the occasion of loss and regret which extend far beyond relationships which are merely personal. In evidence of this fact, a number of his friends at different institutions throughout the country have instituted at the Johns Hopkins University a Julius Turner Award, to be given annually for the most outstanding essay submitted in the field of political science.—CARL B. SWISHER.

## SPECIAL ANNOUNCEMENT

### *Next Annual Meeting of the Association*

The 1953 meeting of the American Political Science Association will be held at the Statler and Mayflower Hotels in Washington, D. C., on September 10–12. Professor John Gange of the Woodrow Wilson School of Foreign Affairs, University of Virginia, has accepted the chairmanship of the program committee. Mrs. Kathryn Stone is to be chairman of the local arrangements committee.

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